IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ELECTION PETITION NO.10 OF 2004

Shri Arun Dattatray Sawant,
Adult, Occ: Business, residing at
Shrikrishna Prasad Building,
Ambernath Road, Belwali,
Post Kulgaon (West),
Taluka Ambernath,
PIN 421 503, Dist.Thane. ...Petitioner

V/s.

Shri Kisan Shankar Kathore,
Adult, residing at Sagaon
(Patil Pada), Post Pimploli,
Taluka Ambernath, Dist.Thane. ...Respondent

.....

Mr.B.D.Joshi with Mrs.Anjali Helekar for Petitioner.

Mr.Pradeep R.Kadam with Mr.Ramakant Paranjape & Mr.M.M.Vaidya for Respondent.

.....

CORAM: A.M.KHANWILKAR, J.

AUGUST 16, 2007.

ORAL JUDGMENT :

1. This Election Petition is filed by a voter of 56, Ambernath Legislative Assembly Constituency in Thane District for declaration that the

nomination of the Respondent has been improperly accepted by the Returning Officer of 56, Ambernath Legislative Assembly Constituency and the election of Respondent is void due to non-compliance of the provisions of the Constitution of India and the Representation of People Act and Rules and Orders made under the Act. The Petitioner has asked for a declaration that the election of the Respondent as a member of Maharashtra Legislative Assembly from Constituency No.56, Ambernath Legislative Assembly Constituency in the election held on 13th October 2004 is null and void.

2. The relevant facts to be borne in mind are that the Respondent filed his nomination on 20th September 2004 as official candidate of the Nationalist Congress Party and his symbol was "Clock" in respect of the elections to be held on 13th October 2004. The objections were filed in relation to the nomination of the Respondent, however, the Returning Officer accepted his nomination. The Polling in the Constituency was held on 13th October 2004 and the result thereof was declared on 16th October 2004. In the said

election, besides the Respondent, other five candidates were in the fray. Out of them, two were independent candidates, the other three were the official candidates of political parties namely; Bahujan Samaj Party, Shivsena and Samajwadi Party. The results declared by the Returning Officer in Form 21 E on 16th October 2004 is as follows :

"

S.No.	Name of Candidate	Party Affiliation	Name of Votes Polled
1.	Kathore Kisan Shankar	National Congress Party	1,14,675
2.	Dolas Bhimrao Rupaji	Bahujan Samaj Party	5,086
3.	Shaikh Sabhirbhai Haji Karim	Shivsena	1,06,582
4.	Manoj Jeetpratap Singh	Samajwadi Party	6,463
5.	Gaikwad Sudha Naresh	Independent	15,184
6.	Bendale Kumud Ramdas	Independent	3,484
			2,51,474

Total Number of Electors : 545810

Total Number of Valid Votes polled : 251474

Total Number of rejected votes : 117

Total number of tendered votes : 34

I declare that ..

KATHORE KISAN SHANKAR (Name) of AT-POST-SAGAON, PATILPADA, TAL.AMBERNATH (Address) has been duly elected to fill the seat.

Place :- Ambernath

Date :- 16/10/2004

Returning Officer,
56-Ambernath Assembly Constituency"

. Out of the total valid votes polled, the Respondent secured 1,14,675 votes and his nearest rival from Shivsena Party secured 1,06,582 votes. As a result, the Respondent was declared as elected candidate.

3. The Petitioner who asserts to be one of the voter from the 56, Ambernath Legislative Assembly Constituency, has approached this Court to declare the election of the Respondent is void and invalid on the ground under Section 100(1)(d)(i) of improper acceptance of Respondent’s nomination and also on the ground provided by Section 100(1)(d)(iv) of the Act. According to the Petitioner, the nomination of the Respondent and

his consequential election was void on account of non-compliance of the provisions of the Constitution of India or of the Representation of People Act or any Rules or Orders made under the Act. The basis on which such relief is sought, is elaborated in the Election Petition to which I shall make reference a little later.

4. According to the Petitioner, the election in question was not conducted as per the procedure, Rules and Regulations as well as mandatory directives of the Apex Court and the orders issued by the Election Commission. The Petitioner has referred to the exposition of the Apex Court in the case of **Union of India vs. Association for Democratic Reforms and Anr. reported in AIR 2002 SC 2112**, wherein the Apex Court has held that the powers of Election Commission are plenary and include all powers necessary for smooth conduct of free and fair election. According to the Petitioner, the purport of the exposition of the decision is that the directions issued by the Election Commission of India are intended to facilitate the voters to get the relevant

information of every candidate contesting the election on matters such as criminal cases against him, his educational qualification as well as his/her assets and liabilities or of his/her spouse or dependent relations. That information is vital to assess the candidate’s competence and suitability. The Petitioner has then referred to the direction issued by the Election Commission on the basis of the abovesaid decision of the Apex Court which postulates that each candidate contesting the Election to the Legislative Assembly shall submit as a necessary part of his nomination paper, information on affidavit relating to matters specified in the said directives. The directions issued by the Election Commission also provided that if such affidavit is not accompanied along with the nomination paper, the nomination paper shall be liable for rejection by the Returning Officer. The directives further provided that furnishing of any wrong or incomplete information or suppression of any material information by any candidate in the said affidavit, may also result in the rejection of his nomination paper, where such wrong or incomplete information or suppression of

material information is considered by the Returning Officer to be a defect of substantial character, apart from inviting penal consequences under the Indian Penal Code for furnishing wrong information to a public servant or suppression of material facts before him.

5. In Para 5 of the Petition, the Petitioner has then referred to the promulgation of Representation of People Amendment (Amendment) Ordinance 2002 (No.4 of 2002) on 24th August 2002 so as to amend the Representation of People Act, 1951 by inserting Section 33-A, 33-B and Section 125-A and amending Section 169 of the Representation of People Act, 1951. It is then stated that by virtue of Section 33-B of the Ordinance, the directives issued by the Election Commission under order dated 28th December 2002 were rendered ineffective. As a result, the said amendment was challenged before the Apex Court in the case of **Peoples' Union for Civil Liberties (PUCL) & Anr. vs. Union of India and Anr. etc.** The Apex Court, in its decision reported in **(2003) 4 SCC 399** held that Section 33-A introduced by the

Parliament in relation to pending criminal cases and past involvement in such cases is reasonably adequate to safeguard the right to information vested in the voter/citizen. However, the Apex Court proceeded to declare Section 33-B as null and void and clarified that the earlier instructions of Election Commission of India dated 28th June 2002 would continue to be operative, subject to the directions issued by the Apex Court. It is then stated that the Election Commission on the basis of the said decision, on 27th March 2003 and in exercise of powers under Article 324 of the Constitution of India, in supersession of its earlier order dated 28th June 2002, issued revised directions to all concerned. In Para 6 of the Petition, it is stated that as per the directives issued by the Election Commission on 27th March 2007, a candidate who is contesting election to the State Legislature is under an obligation to file two affidavits giving details viz.

(i) whether a candidate is convicted/acquitted/discharged of any criminal offence in the past, if any,

whether he is punished with imprisonment or fine;

(ii) prior to six months of filing of nomination whether the candidate is accused in any pending case of any offence punishable with imprisonment for two years or more or in which charge is framed or cognisance is taken by the Court of Law, if so, the details thereof;

(iii) the assets (immovable, movable, bank balances etc.) of a candidate and of his/her spouse and that of dependants;

(iv) liabilities, if any, particularly, whether there are any over dues of any public financial institution or Government dues; and

(v) the educational qualification of the candidate.

. The Petitioner further asserts that if a

candidate furnishes any wrong or incomplete information or suppresses any material information in or from the said affidavit than the nomination form of the said candidate is liable to be rejected, if the said defect is of a substantial character, apart from inviting penal consequences under the Indian Penal Code for furnishing wrong information to a public servant or suppression of material facts before him.

6. In Paragraphs 7 and 8, the Petitioner asserts that the Respondent chose to suppress important and material information while filing affidavits along with his nomination form and has failed to comply with the mandatory provisions of the Law, inviting appropriate consequences including of rejection of his nomination paper. The Petitioner asserts that furnishing wrong or incomplete information or suppression of any material information in the affidavit renders the affidavit false, frivolous and no affidavit in the eye of Law.

7. In Paragraph 9, the Petitioner has

referred to the contrary statements made by the Respondent in two affidavits filed by him before the Returning Officer in relation to the pending criminal case being Criminal Case No.12 of 1997.

8. In Paragraph 10, the Petitioner asserts that the Respondent made false statement in the affidavit that he had no Government dues, which he was liable to pay. In fact, on the date of filing of the nomination papers, the Respondent had outstanding bills to be paid to Maharashtra State Electricity Board, which is a Government Undertaking in respect of two electricity meter connection in his name in the amount of Rs.79,200/- (Rupees Seventy-Nine Thousand Two Hundred) and Rs.66,250/- (Rupees Sixty-six Thousand Two Hundred Fifty) respectively. To substantiate this position, the Petitioner relies on the copy of the letter issued by the Executive Engineer of M.S.E.B. dated 4th October 2004 confirming the outstanding bills payable by the Respondent.

9. In Paragraph 11, the Petitioner asserts that in the affidavit filed by the Respondent along

with his nomination form, he has suppressed the immovable property belonging to the Respondent and his spouse namely his wife Mrs.Kamal Kisan Kathore. The Petitioner states that Bungalow No.866 at Badlapur in the limits of Kulgaon Badlapur Municipal Council stands in the name of Respondent's wife Mrs.Kamal Kisan Kathore, which information has been suppressed by the Respondent. It is further asserted that the Respondent has also not disclosed the fact that a sum of Rs.3,465/- (Rupees Three Thousand Four Hundred Sixty-five) was due and payable by the Respondent's wife to Kulgaon Badlapur Municipal Council by way of house property tax in relation to the said bungalow for the relevant period.

10. In Paragraph 12, the Petitioner asserts that the Respondent suppressed the material fact in the affidavit filed along with the nomination form that his wife had purchased immovable property situated in Village Bhilkhede, Taluka Jamner, District Jalgaon along with Smt.Vimal Gokul Patil in the year 2000 for a sum of Rs.4,42,000/- (Rupees Four Lakhs Forty-two Thousand) by a Sale Deed,

which was duly registered with the Office of the Sub-Registrar, Jamner, District Jalgaon. The said immovable property is agricultural land admeasuring about 15 acres which is purchased from one Jagannath Trimbak Kulkarni, residing at post Nachankhede, Taluka Jamner, District Jalgaon. It is further stated in the same paragraph that the Respondent's wife along with said Smt.Vimal Gokul Patil also purchased another immovable property for a sum of Rs.70,000/- (Rupees Seventy Thousand) from one Jahangir Ahmed Patel admeasuring about 84 ares. The Petitioner has relied on the Sale Deeds which are annexed to the Election Petition as Exhibits 'F' and 'F-2'. English translation of the said Sale Deeds is produced at Exhibits 'F-1' and 'F-3' to the Election Petition. The Petitioner then asserts that the said Smt.Vimal Gokul Patil is none else but wife of one Sr.Inspector of Police Shri Gokul Patil, who incidentally was arrested in Crime Register No.135 of 2002 registered at Bund Garden Police Station, Pune, popularly known as 'Telgi Scam Case', which offence is punishable under the provisions of the Indian Penal Code as well as the Maharashtra Control of Organised Crimes Act, 1999.

It is the case of the Petitioner that during the election of the Maharashtra Legislative Assembly held in the month of October 2004, Telgi Scam Case was one of the main issue during the election, as it was widely believed that many politicians were involved in the said Scam. The Petitioner asserts that the Respondent has no known source of income and even his wife is not employed or earning member in the family. According to the Petitioner, acquisition of such large property in the name of the Respondent's wife jointly purchased in the name of wife of said Gokul Patil leads to believe that the consideration amount was financed by Gokul Patil, who is one of the accused in Telgi Scam Case out of the money generated from the said Scam. According to the Petitioner, this information, though crucial and material, was intentionally suppressed by the Respondent in his affidavit filed along with the nomination. According to the Petitioner, if these facts were made known to the voters/electorals, it would have materially affected the election and the voters/electorals would have definitely rejected the candidature of the Respondent. It is also asserted that due to

suppression of these facts, election of the Respondent has been materially affected.

11. In Paragraph 13 of the Petition, the Petitioner has referred to the fact that motor vehicle No.MH-05-AC-555 of Mahendra Scorpio make is owned in the name of Respondent's wife, which fact has been suppressed in the affidavit of the Respondent filed along with the nomination form. The Petitioner states that if the Respondent were to disclose this information, the link of the Respondent's wife with the accused in Telgi Scam Case would have been exposed, for which reason, all assets of the Respondent's wife have been suppressed in the mandatory affidavit. The Petitioner has relied on the letter issued by the Regional Transport Office, Kalyan dated 4th October 2004 (Exhibit 'G' to the Election Petition) to substantiate the fact that the above numbered vehicle was shown in the Official record in the name of Respondent's wife.

12. In Paragraph 14 of the Petition, the Petitioner asserts that the Respondent has

illegally, malafide suppressed the property belonging to him in the affidavit filed by him along with the nomination form. In that, the Respondent has suppressed that he has right, title and interest in the land admeasuring 1330 sq.meters in Survey No.48, Hissa No.9, Plot No.2 and in the land admeasuring about 1292 square meters bearing Survey No.48, Hissa No.9, Plot No.3 at Mauje Kulgaon, Taluka Ambernath, District Thane. The Petitioner asserts that the Respondent has executed an Agreement of Development and Sale in relation to the said property, which was purchased in partnership along with two other partners, of which the Respondent is one of the partner. The name of the partnership is also disclosed by the Petitioner as M/s.Padmavati Developers, having their Office at Shraddha Sagar Building, Near Railway Gate, Kulgaon (East), Taluka Ambernath, District Thane. The Petitioner then asserts that the Respondent is the sitting President of Zilla Parishad, Thane and he has no known source of income and immovable properties whose market value is in lakhs, are purchased by Respondent either in his name or in the name of his wife. That if all these properties

are clubbed together, the market value of the said immovable property may run in crores of rupees; and as the Respondent would be unable to explain his source of income at the time of purchase of the respective properties in his name, has procured the same in the name of his wife. It is for this reason, those properties have not been declared. It is a case of suppression of material information, for which reason, the affidavit filed on behalf of the Respondent along with the nomination form deserve to be rejected.

13. In Paragraph 15, Petitioner has asserted that in the affidavit filed by the Respondent along with the nomination papers, it has been declared by the Respondent that he had taken a loan of Rs.5,50,000/- (Rupees Five Lakhs Fifty Thousand) from Thane District Central Cooperative Bank. The Petitioner states that the said information furnished by the Respondent in his affidavit is false on the face of the record. Inasmuch as the Respondent is the ex-officio director of the Thane District Central Cooperative Bank, being the Chairman of Zilla Parishad, Thane, was not eligible

to get loan from that Bank being Director of the Bank. The Petitioner has relied on letter issued by the Bank which is annexed as Exhibit ‘H’ to the Election Petition to substantiate his claim that the Respondent had never taken loan from the said Bank.

14. In Paragraphs 16 to 18, in substance, the Petitioner has asserted that the Respondent has suppressed material facts and information in the affidavits filed along with the nomination form. Such information was suppressed only to mislead the voters of Ambernath Legislative Assembly Constituency. It is the case of the Petitioner that if the Respondent were to disclose purchase and ownership of such huge property, in his name or in the name of his wife would have lead to an inference that such property must have been purchased from the funds generated from some unknown source or from tainted source. The Petitioner asserts that if these facts were disclosed, the voters of Ambernath Legislative Assembly Constituency would have definitely rejected the Respondent’s candidature in the

Assembly Election held on 13th October 2004. The Petitioner asserts that suppression of such material information affected the right of information of the voters to know the candidate's background which was their fundamental right. According to the Petitioner, therefore, it is a case of improper acceptance of nomination form of the Respondent and his election on the basis of such defective nomination form was liable to be declared null and void.

15. In Paragraph 19, the Petitioner has stated that immediately after the date of scrutiny i.e. 23rd September 2004, the Petitioner came to know that Respondent had given false information and suppressed material information in the mandatory affidavits filed by the Respondent along with nomination papers. Accordingly, the Petitioner addressed a letter to the Returning Officer pointing out the falsity and suppression of material information in the affidavits of the Respondent and to reject the nomination form of the Respondent. Naturally, as the scrutiny was already over and nomination form of the Respondent was

already accepted by the Returning Officer, nothing could be done on the basis of the representation made by the Petitioner. For that reason, the Petitioner has now approached this Court for reliefs as referred to earlier.

16. The Respondent has filed his written statement which was verified on 11th April 2005. In short, the Respondent has denied the claim of the Petitioner. I shall elaborate about the contents of the written statement while dealing with the relevant issue. Suffice it to observe that on the basis of the pleadings, issues were settled and framed under order dated 20th April 2005 as under :

> "(1) Does the Respondent proves that the Election Petition is barred by the Law of Limitation?
>
> (2) Does the Respondent proves that the Election Petition is not maintainable for non-joinder of parties?
>
> (3) Does the Respondent proves that the Petition as well as documents annexed thereto have not been properly verified and therefore, the Petition is not maintainable in Law?

(4) Does the Petitioner proves that the directions and orders issued by the Election Commissioner of India dated 27th March 2003 is mandatory and non-compliance thereof would render the nomination form submitted by the candidate invalid?

(5) Does the Petitioner proves that Respondent has not filed two affidavits along with the Nomination Form as per the directions and orders issued by the Election Commissioner of India dated 27th March 2003? If so, what effect?

(6) Does the Petitioner proves that in the affidavits to be filed along with the nomination papers, the Respondent has given wrong or incomplete information, or has suppressed material information in or from the said affidavits? If so, what effect?

(7) Does the Petitioner proves that the Respondent's Nomination Form is improperly accepted by the Returning Officer?

(8) Whether on account of improper acceptance of the nomination paper, the Election result is materially affected?

(9) What order?"

17. After issues were framed, affidavit of evidence in lieu of examination-in-chief was filed along with the documents. It was agreed between the parties that the witnesses be examined on commission. Accordingly, by order dated August 16,

2005, Court Commissioner was appointed to record evidence of the concerned witness of the Petitioner. The recording of evidence of the Petitioner's witness accordingly proceeded before the Court Commissioner. Even the evidence of other witnesses summoned at the instance of the Petitioner came to be recorded before the Commissioner. From the report submitted by the Commissioner, it is seen that several objections were raised by both sides during recording of evidence. However, none of those objections have been pursued during the hearing of the present Petition. In other words, neither side has invited decision of the Court in relation to the objections recorded by the Court Commissioner during the recording of evidence (except to one document to which reference is made only in the written submissions). On 1st of March 2007, when the matter was taken on Board, it was found that the Commission work was not progressing speedily as was expected. As the Petitioner's evidence was already closed by then, it was decided that the evidence of Respondent and his witnesses will be recorded before the Court. Accordingly, the evidence of

Respondent and his witnesses was recorded in Court and was concluded on 14th March 2007. As the recording of evidence was closed, the matter could have proceeded for final arguments, however, it was noticed that handwriting expert's opinion, in relation to certain documents was invited in terms of the order passed earlier, was still awaited. In the circumstances, direction was issued to expedite the said report. The report was eventually received in a sealed cover which was opened in Court on 23rd March 2007. The same was taken on record to be read in evidence in terms of provisions of Order XXVI read with Rule 10A of the Code of Civil Procedure, 1908. Thereafter, Counsel for the Petitioner made statement before the Court that the Petitioner was not desirous of taking out any formal application for summoning the expert, for recording of his evidence as his witness. As the recording of evidence was complete, the matter was ordered to be placed for oral arguments.

18. When the matter was listed for arguments on 3rd April 2007, Counsel for the Petitioner had taken out application for the relief that Issue

No.8 already framed by this Court be deleted, as it was not necessary for the Petitioner to plead or prove that the election result of the Respondent is materially affected. That request was considered and the Application was disposed of with observation that all aspects in relation to Issue No.8 will be considered in the final Judgment.

19. The arguments of both sides were finally concluded on 13th April 2007. Counsel appearing for the parties requested for time to file written submissions. Accordingly, written submissions on behalf of the Petitioner were filed in the Office on 23rd April 2007, whereas of the Respondent was filed on 30th April 2007.

20. The Petitioner has not only examined himself, but also caused to issue witness summons to fourteen other witnesses.However, eventually PW 7 Kumudini was not examined. In other words, in all fourteen witnesses have been examined as Petitioner’s witnesses before the Court Commissioner, to substantiate the case of the Petitioner. The Respondent, on the other hand, has

examined himself and two more witnesses as Respondent’s witnesses (in all three).

21. After having considered the materials on record and the rival submissions, I shall proceed to answer the issues that arise for my consideration.

ISSUES 1, 2 and 3 :

22. Insofar as issue Nos.1, 2 and 3 are concerned, Counsel for the Respondent, in all fairness, submitted that Respondent would not press those issues. In the circumstances, it is not necessary for me to elaborate on matters in relation to these issues. Accordingly, I shall straight away proceed to deal with Issue No.4.

ISSUE NO.4 :

23. Insofar as Issue No.4 is concerned, the question whether the directions and orders issued by the Election Commission are mandatory and non-compliance thereof would render the nomination

paper submitted by the candidate invalid, is a question dependent on the construction of the relevant provisions and the decisions of the Apex Court. For that, the background in which the stated directions or orders were issued by the Election Commission on 27th March 2007 will have to be adverted to. In a matter which was brought before the Delhi High Court by Association for Democratic Reforms in Writ Petition No.7257 of 1999, that Court in exercise of powers under Article 226 of the Constitution of India issued certain directions to the Election Commission, inter alia, to implement the recommendations made by the Law Commission in its 170th Report to make necessary changes in Rule 4 of the Conduct of Election Rules, 1961. The said decision of the Delhi High Court was subject matter of challenge before the Apex Court at the instance of the Union of India. One of the question posed before the Apex Court was whether the High Court has jurisdiction to issue such directions in exercise of powers under Article 226 of the Constitution of India? While addressing that question, the Court also enquired into the question as to whether the

Election Commission is empowered to issue directions as ordered by the High Court and more importantly, the wider question as to whether a voter, a citizen of our country, has right to get relevant information about the candidate contesting the election; such as, his assets and liabilities, qualification and involvement in any criminal offence, so as to educate the voter and enable him to take an informed decision about the suitability and competence of a candidate contesting election as MP or MLA?

24. The Apex Court in its reported decision in **AIR 2002 SC 2112 in the case of Union of India vs. Association for Democratic Reforms**, on analysing the gamut of decisions and the provisions of law, unreservedly held that Article 324 operates in areas left unoccupied by Legislation and the words "superintendence, direction and control" as well as "conduct of elections", "are the broadest terms". The Apex Court proceeded to hold that it is settled position that the power of the Commission is plenary in character in exercise whereof the Commission can cope with situation where the field

is unoccupied by issuing necessary orders. The Apex Court has held that, as the Commission was competent to issue directions and orders under Article 324 of the Constitution of India on the matters specified by the High Court, no fault can be found with the High Court having issued direction to the Election Commission to discharge that obligation. In Paragraph 55 of the reported decision, it is held that the Court possessed ample power to direct the Commission to fill the void in absence of suitable Legislation covering the field, as the voters have a fundamental right to be well-informed and educated about the contesting candidate's antecedents so as to enable them to elect a proper candidate in their own assessment. It is further observed that it is the duty of the executive to fill the vacuum by executive orders because its field is coterminous with that of the legislature, and where there is inaction by the Executive, for whatever reason, the judiciary must step in, in exercise of its constitutional obligations to provide a solution till such time the Legislature acts to perform its role by enacting proper legislation to cover the field.

The Court went on to further observe that the adverse impact of lack of probity in public life leading to a high degree of corruption is manifold. Therefore, if the candidate is directed to declare his/her as also their spouse's and dependents' assets, immovable, movable valuable articles, it would have its own effects. In Paragraph 32 of the same reported Judgment, the Apex Court has restated the position expounded in the earlier decision of the Constitution Bench that in democracy the little man - voter has overwhelming importance on the point and the little-large Indian (voter) should not be highjacked from the course of free and fair elections by subtle perversion of discretion of casting votes. In a continual participative operation of periodical election, the voter does a social audit of the candidate and for such audit, he must be well informed about the past of the candidate. It is on this high principles, the Apex Court in Paragraph 56 summed up the legal and constitutional paradigm about the jurisdiction of the Election Commission, the extant of plenary character of power to act in conformity with the provisions. It is held that a direction so issued

by the Election Commission will mean an order issued to a particular individual or a precept which may have to follow and it may be specific or a general order and such phrase should be construed liberally empowering the Election Commission to issue such directions. It was concluded that the word "elections" includes the entire process of election which consists of several stages and it embraces many steps, some of which may have an important bearing on the process of chosing a candidate. It is held that fair election contemplates disclosure by the candidate of his past including the assets held by him, so as to give a proper choice to the voter according to his thinking and opinion. Such requirement of disclosure, the Apex Court observed, that it would have its own effect as a step-in-aid and voters may not elect law breakers as law-makers and some flowers of democracy may blossom. Clauses 4, 5 and 7 of Paragraph 56 of the said reported Judgment, needs to be extensively reproduced, which read thus:

> "56. To sum up the legal and constitutional position which emerges from

the aforesaid discussion, it can be stated that:-

1. .....
2. .....
3. .....

4. To maintain the purity of elections and in particular to bring transparency in the process of election, the Commission can ask the candidates about the expenditure incurred by the political parties and this transparency in the process of election would include transparency of a candidate who seeks election or re-election. In a democracy, the electoral process has a strategic role. The little man of this country would have basic elementary right to know full particulars of a candidate who is to represent him in Parliament where laws to bind his liberty and property may be enacted.

5. The right to get information in democracy is recognised all throughout and it is natural right flowing from the concept of democracy. At this stage, we would refer to Article 19(1) and (2) of the International Covenant of Civil and Political Rights which is as under:-

> "(1) Everyone shall have the right to hold opinions without interference.
>
> (2) Everyone shall have the right to freedom of expression; this right shall include freedom to speak, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

> 6. .....
>
> 7. Under our Constitution, Article 19(1)(a) provides for freedom of speech and expression. Voters' speech or expression in case of election would include casting of votes that is to say, voter speaks out or expresses by casting vote. For this purpose, information about the candidate to be selected is must. Voter's (little man-citizen's) right to know antecedents including criminal past of his candidate contesting election for MP or MLA is much more fundamental and basic for survival of democracy. The little man may think over before making his choice of electing law breakers as law makers". (emphasis supplied)

25. Keeping the above principles in mind, the Apex Court issued directions to the Election Commission in the following words :

> "58. The Election Commission is directed to call for information on affidavit by issuing necessary order in exercise of its power under Article 324 of the Constitution of India from each candidate seeking election to Parliament or a State Legislature as a necessary part of his nomination paper furnishing therein, information on the following aspects in relation to his/her candidature:-
>
> (1) Whether the candidate is convicted/acquitted/discharged of any criminal offence in the past-if any, whether he is punished with imprisonment or fine?
>
> (2) Prior to six months of filing of nomination, whether the candidate is

> accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the Court of law. If so, the details thereof.
>
> (3) The assets (immovable, movable, bank balances etc.) of a candidate and of his/her spouse and that of dependants.
>
> (4) Liabilities, if any, particularly whether there are any over dues of any public financial institution or Government dues.
>
> (5) The educational qualifications of the candidate.
>
> 59. It is to be stated that the Election Commission has from time to time issued instructions/orders to meet with the situation where the field is unoccupied by the legislation. Hence, the norms and modalities to carry out and give effect to the aforesaid directions should be drawn up properly by the Election Commission as early as possible and in any case within two months".

26. There can be no debate on the point that acting on the above decision, the Election Commission issued directions, inter alia, in exercise of powers under Article 324 of the Constitution, on 28th June 2002. Soon after the said directions were issued, on 24th August 2002, an Ordinance was promulgated by the President of India known as the Representation of People

(Amendment) Ordinance, 2002 (No.4 of 2002), further to amend the Representation of People Act, 1951 by inserting Sections 33-A, 33-B and 125-A and amending Section 169 of the Representation of People Act 1951.

27. Section 33-B provided that notwithstanding anything contained in any Judgment, decree or order of any Court or any direction, order or any other instruction issued by the Election Commission, no candidate shall be liable to disclose or furnish any such information, in respect of his election, which is not required to be disclosed or furnished under this Act or the rules made thereunder. The effect of this provision was to nullify the rigours of the directives issued by the Election Commission in its order dated 28th June 2002, which in turn were based on the law declared in **Association for Democratic Reforms (Supra)**. The provisions introduced by the said Ordinance later became Act passed by the Parliament being Representation of People (3rd Amendment) Act 2002. As a result, the matter once again went before the Apex Court at the instance of the People’s Union of Civil Liberties

(PUCL) and Anr. This time, the Apex Court examined the matter in further detail while considering the challenge of constitutional validity in relation to provisions introduced by the amending Act such as Section 33-B. The Apex Court upheld the challenge and by its decision reported in **(2003) 4 SCC 399 in People's Union for Civil Liberties (PUCL) & Anr. vs. Union of India & Anr.**, held that Section 33-B of the Act was invalid. At the same time, it is held that Section 33-A of the Act was sufficient compliance of the view expressed in its earlier decision. Even in this Judgment, the Apex Court has restated the position that the right of information of the voter is a paramount and fundamental right. It is held that, the reason to have right of information, with regard to the antecedents of the candidate, is that, the voter can judge and decide in whose favour he should cast his vote. The Apex Court, in Para 21, has adverted to the Ethics Manual for Members, Officers and Employees of the U.S.House of Representatives, which amongst others, spell out the policies underlying disclosure and the specific disclosure requirement.

28. In Para 22, the Apex Court has also adverted to the observations made by the Committee on State Funding of Elections headed by Shri Indrajit Gupta as Chairman, which emphatically observes that what is needed, however, is an immediate overhauling of the electoral process, whereby elections are freed from evil influence of all vitiating factors, particularly criminalisation of politics. It has further observed that it goes without saying that money power and muscle power go together to vitiate the electoral process and it is their combined effect which is sullying the purity of electoral contests and affecting free and fair elections. After referring to reported decisions in Para 27, the Apex Court went on to hold that it is expected by all concerned and as has been laid down by various decisions of the Apex Court that for survival of true democracy, the voter must be aware of the antecedents of his candidate. The voter has to cast intelligent and rational vote according to his own criteria. A well-informed voter is the foundation of democratic structure. Further, providing complete information to a voter

about the candidate, who is the citizen of this Country, is one facet of the fundamental right of the voters under Article 19(1)(a) of the Constitution. The Apex Court then went on to consider the constitutional validity of Section 33-B of the Act. The Apex Court after referring to plethora of Judgments, in Para 50, proceeded to hold that to combat the naked display of unaccounted/black money by the candidates, declaration of assets is likely to have a check on violation of the provisions of the Act and other relevant Acts including the Income-tax Act. The crucial discussion then follows on the topic, ‘right to vote is a statutory right’. In Paragraph 62, the Court went on to hold that in an Election Petition challenging the validity of election, rights of the parties are governed by the statutory provisions for setting aside the election, but this would not mean that the citizen who has right to be a voter and elect his representative in the Lok Sabha or Legislative Assembly has no fundamental right. The fundamental right of the voter cannot be abridged, controlled or restricted by statutory provisions except as permissible under the

Constitution. The Court in Paragraph 70 then authoritatively held that right of a voter to know the complete bio-data and antecedents of a candidate is the foundation of democracy. The Court then made reference to the old dictum that - let the people have the truth and the freedom to discuss it and all will go well with the Government - should prevail. The Apex Court has thus held that freedom of speech and expression is basic to and indivisible from a democratic polity. It includes right to impart and receive information. Thus, the voter has a fundamental right to know the bio-data and complete antecedents of the candidate who has been nominated for election.

29. The Apex Court in Paras 72 and 73 specifically dealt with the modification in relation to the directions issued by the Election Commission on 28th June 2002 which were based on the decision in the earlier case of the Apex Court in **Association for Democratic Reforms (supra)**. It is noted that no exception can be taken to the insistence of affidavit with regard to the matters specified in Judgment in **Association for Democratic**

Reforms case (supra). However, the Apex Court has disapproved the only one amongst the other directions issued by the Election Commission, which enabled the Returning Officer to reject the nomination paper on the ground of furnishing wrong information or concealing material information, by a summary enquiry at the time of scrutiny of nominations itself. This is obviously because, there may be some issues which are contentious issues and not descrimible "ex facie" and could be disclosed only upon an enquiry and upon taking evidence on the relevant facts. That however, does not mean that the direction given to the Election Commission in the earlier decision in **Association for Democratic Reforms (supra)** on the basis of which the Election Commission issued orders on 28th June 2002 making it mandatory to furnish affidavit along with the nomination form, has been diluted in any manner. Besides, the consequence for furnishing of any wrong or incomplete information or suppression of any material information by a candidate in or from the said affidavit, of invalidating his election, remains unaffected. But that is now to be done by the Court in an election

petition. Suffice it to observe that the requirement of and insistence of filing of truthful affidavit of the candidate providing his complete antecedents along with the nomination form, which information becomes integral part of the nomination form, has been made mandatory and non-compliance of that direction may entail in invalidating his election.

30. In other words, the limited area in which departure has been made in the **PUCL's case (supra)** is that the Returning Officer cannot undertake summary enquiry so as to reject the nomination on the ground that the affidavits filed along with the nomination paper are wrong or incomplete information or amounting to suppression of any material information at the time of scrutiny of nominations. That, however, does not mean that the ground of improper acceptance of nomination on account of filing of affidavits containing wrong or incomplete information or amounting to suppression of material information is completely done away with. That is a matter which will have to wait, to be agitated in the Election Petition to be filed

before the Court.

31. Reverting to the Apex Court's decision, Justice Shah, speaking for the Bench, summarised the position in Paragraph 78 and 79 as follows:

> "78. What emerges from the above discussion can be summarised thus:
>
> (A) The legislature can remove the basis of a decision rendered by a competent court thereby rendering that decision ineffective but the legislature has no power to ask the instrumentalities of the State to disobey or disregard the decisions given by the court. A declaration that an order made by a court of law is void is normally a part of the judicial function. The legislature cannot declare that decision rendered by the Court is not binding or is of no effect.
>
> It is true that the legislature is entitled to change the law with retrospective effect which forms the basis of a judicial decision. This exercise of power is subject to constitutional provision, therefore, it cannot enact a law which is violative of fundamental right.
>
> (B) Section 33-B which provides that notwithstanding anything contained in the judgment of any court or directions issued by the Election Commission, no candidate shall be liable to disclose or furnish any such information in respect of his election which is not required to be disclosed or furnished under the Act or the rules made thereunder, <u>is on the face of it beyond the legislative competence, as this Court has held that the voter has</u>

a fundamental right under Article 19(1)(a) to know the antecedents of a candidate for various reasons recorded in the earlier judgment as well as in this judgment.

The Amended Act does not wholly cover the directions issued by this Court. On the contrary, it provides that a candidate would not be bound to furnish certain information as directed by this Court.

(C) The judgment rendered by this Court in *Assn.for Democratic Reforms* has attained finality, therefore, there is no question of interpreting constitutional provision which calls for reference under Article 145(3).

(D) The contention that as there is no specific fundamental right conferred on a voter by any statutory provision to know the antecedents of a candidate, the directions given by this Court are against the statutory provisions is, on the face of it, without any substance. In an election petition challenging the validity of an election of a particular candidate, the statutory provisions would govern respective rights of the parties. However, voters' fundamental right to know the antecedents of a candidate is independent of statutory rights under the election law. A voter is first citizen of this country and apart from statutory rights, he is having fundamental rights conferred by the Constitution. Members of a democratic society should be sufficiently informed so that they may cast their votes intelligently in favour of persons who are to govern them. Right to vote would be meaningless unless the citizens are well informed about the antecedents of a candidate. There can be little doubt that exposure to public gaze and scrutiny is one of the surest means to cleanse our democratic governing system and to have competent legislatures.

(E) It is established that fundamental rights themselves have no fixed content, most of them are empty vessels into which each generation must pour its content in the light of its experience. The attempt of the Court should be to expand the reach and ambit of the fundamental rights by process of judicial interpretation. During the last more than half a decade, it has been so done by this Court consistently. There cannot be any distinction between the fundamental rights mentioned in Chapter III of the Constitution and the declaration of such rights on the basis of the judgments rendered by this Court.

79. In the result, Section 33-B of the Amended Act is held to be illegal, null and void. However, this judgment would not have any retrospective effect but would be prospective. Writ petitions stand disposed of accordingly."

(emphasis supplied)

32. In a separate Judgment, though concurring, Justice Reddi, while specifically dealing with the issue of assets and liabilities, in Paragraphs 119 to 121, of the same reported Judgment has observed thus:

"**IV. (2) Assets and liabilities**

119. Disclosure of assets and liabilities is another thorny issue. If the right to

information is to be meaningful and if it is to serve its avowed purpose, I am of the considered view that the candidate entering the electoral contest should be required to disclose the assets and liabilities (barring articles of household use). A Member of Parliament or State Legislature is an elected representative occupying high public office and at the same time, he is a "public servant" within the meaning of the Prevention of Corruption Act as ruled by this Court in the case of *P.V. Narasimha Rao v. State*. They are the repositories of public trust. They have public duties to perform. It is borne out by experience that by virtue of the office they hold there is a real potential for misuse. The public awareness of financial position of the candidate will go a long way in forming an opinion whether the candidate, after election to the office had amassed wealth either in his own name or in the name of family members viz. spouse and dependent children. At the time when the candidate seeks re-election, the citizens/voters can have a comparative idea of the assets before and after the election so as to assess whether the high public office had possibly been used for self-aggrandizement. Incidentally, the disclosure will serve as a check against misuse of power for making quick money, a malady which nobody can deny, has been pervading the political spectrum of our democratic nation. As regards liabilities, the disclosure will enable the voter to know, inter alia, whether the candidate has outstanding dues payable to public financial institutions or the Government. Such information has a relevant bearing on the antecedents and the propensities of the candidate in his dealings with public money. "Assets and liabilities" is one of the important aspects to which extensive reference has been made in *Assn. for Democratic Reforms*

case. The Court did consider it, after an elaborate discussion, as a vital piece of information as far as the voter is concerned. But, unfortunately, the observations made by this Court in this regard have a been given a short shrift by Parliament with little realization that they have a significant bearing on the right to get information from the contesting candidates and such information is necessary to give effect to the freedom of expression.

120. As regards the purpose of disclosure of assets and liabilities, I would like to make it clear that it is not meant to evaluate whether the candidate is financially sound or has sufficient money to spend in the election. Poor or rich are alike entitled to contest the election. Every citizen has equal accessibility in the public arena. If the information is meant to mobilize public opinion in favour of an affluent/financially sound candidate, the tenet of socialistic democracy and the concept of equality so firmly embedded in our Constitution will be distorted. I cannot also share the view that this information on assets would enable the public to verify whether unaccounted money played a part in contesting the election. So long as Explanation 1 to Section 77 of the RP Act, 1951 stands and the contributions can legitimately come from any source, it is not possible for a citizen/voter to cause a verification to be made on those lines. In my opinion, the real purposes of seeking information in regard to assets and liabilities are those which I adverted to in the preceding paragraph. It may serve other purposes also, but, I have confined myself to the relevancy of such disclosure vis-a-vis right to information only.

121. It has been contended with much

force that the right to information made available to the voters/citizens by judicial interpretation has to be balanced with the right of privacy of the spouse of the contesting candidate and any insistence on the disclosure of assets and liabilities of the spouse invades his/her right to privacy which is implied in Article 21. After giving anxious consideration to this argument, I am unable to uphold the same. In this context, I would like to recall the apt words of Mathew, J., in *Gobind v. State of M.P.* While analysing the right to privacy as an ingredient of Article 21, it was observed: (SCC p.155, para 22)

> "22. There can be no doubt that privacy-dignity claims deserve to be examined with care and to be denied only when an *important countervailing interest is shown to be superior*." (emphasis supplied)

It was then said succinctly: (SCC pp. 155-56, para 22)

> "If the court does find that a claimed right is entitled to protection as a fundamental privacy right, a law infringing it must satisfy the compelling State-interest test. Then the question would be whether a State interest is of such paramount importance as would justify an infringement of the right."

It was further explained: (SCC p. 156, para 23)

> "[P]rivacy primarily concerns the individual. It therefore relates to and overlaps with the concept of liberty. The

> most serious advocate of privacy must confess that there are serious problems of defining the essence and scope of the right. Privacy interest in autonomy must also be placed in the context of other rights and values."

By calling upon the contesting candidate to disclose the assets and liabilities of his/her spouse, the fundamental right to information of a voter/citizen is thereby promoted. When there is a competition between the right to privacy of an individual and the right to information of the citizens, the former right has to be subordinated to the latter right as it serves the larger public interest. The right to know about the candidate who intends to become a public figure and a representative of the people would not be effective and real if only truncated information of the assets and liabilities is given. It cannot be denied that the family relationship and social order in our country is such that the husband and wife look to the properties held by them as belonging to the family for all practical purposes, though in the eye of law the properties may distinctly belong to each of them. By and large, there exists a sort of unity of interest in the properties held by spouses. The property being kept in the name of the spouse *benami* is not unknown in our country. In this situation, it could be said that a countervailing or paramount interest is involved in requiring a candidate who chooses to subject himself/herself to public gaze and scrutiny to furnish the details of assets and liabilities of the spouse as well. That is one way of looking at the problem. More important, it is to be noted that Parliament itself accepted in principle that not only the assets of the elected candidates but also

> his or her spouse and dependent children should be disclosed to the constitutional authority and the right of privacy should not come in the way of such disclosure; but, the hitch lies in the fact that the disclosure has to be made to the Speaker or Chairman of the House after he or she is elected. No provision has been made for giving access to the details filed with the presiding officer of the House. By doing so, Parliament has omitted to give effect to the principle, which it rightly accepted as a step in aid to promote integrity in public life. Having accepted the need to insist on disclosure of assets and liabilities of the elected candidate together with those of other family members, Parliament refrained from making a provision for furnishing the information at the time of filing the nomination. This has resulted in jeopardizing the right to information implicitly guaranteed by Article 19(1)(a). Therefore, the provision made in Section 75-A regarding declaration of assets and liabilities of the elected candidates to the presiding officer has failed to effectuate the right to information and the freedom of expression of the voters/citizens". (emphasis supplied)

33. In the backdrop of the exposition of the Apex Court, the Election Commission proceeded to issue revised directions or Order dated 27th March 2003, in exercise of powers under Article 324(1) of the Constitution of India, consistent with and complimentary to the legal position declared by the Apex Court. In this order, the Election Commission

has extensively referred to the backdrop in which the said directions came to be issued. The relevant portion thereof, reads thus:

> "13. And whereas, the following directions were issued in the judgment of Hon'ble Mr.Justice P.V.Reddi, which was concurred by Mr.Justice D.M.Dharmadhikari-
>
> 6. The right to information provided for by the Parliament under Section 33A in regard to the pending criminal cases and past involvement in such cases is reasonably adequate to safeguard the right to information vested in the voter/citizen. However, there is no good reason for excluding the pending cases in which cognizance has been taken by the Court from the ambit of disclosure.
>
> 9. The Election Commission has to issue revised instructions to ensure implementation of section 33A subject to what is laid down in this judgment regarding the cases in which cognizance has been taken. The Election Commission's order related to disclosure of assets and liabilities will still hold good and continue to be operative. However, direction No.4 of para 14 insofar as verification of assets and liberties by means of summary enquiry and rejection of nomination paper on the ground of furnishing wrong information or suppressing material information should not be enforced.
>
> 14. And whereas the Judgment of Hon'ble

Mr.Justice M.B.Shah, also held that section 33B was illegal null and void and further that the Election Commission would be required to revise its instructions in the light of the directions therein as under:-

It is true that the aforesaid directions issued by the Election Commission is not under challenge but at the same time Prima Facie it appears that the Election Commission is required to revise its instructions in the light of directions issued in Association for Democratic Reforms case (supra) and as provided under the representation of the People Act and its 3rd Amendment;

15. And whereas, by virtue of the Judgment dated the 13th March 2003 of the Supreme Court declaring section 33B of the Representation of the People Act 1951 to be illegal, null and void, the earlier instructions of the Election Commission dated 28th June 2002 would continue to be operative subject to the aforementioned directions of the Supreme Court, and are therefore required to be revised and reissued.

16. Now, therefore the Election Commission in pursuance of the above referred order dated 13th March 2003 of the Hon'ble Supreme Court and in exercise of the powers, conferred on it by Article 324 of the Constitution, of Superintendence directions and control inter alia, of conduct of elections to parliament and State Legislatures, hereby issues, in suppression of its earlier order dated 28th June 2002 its revised directions as follows:

(1) Every candidate at the time of filing his nomination paper for any election to the Council of States House of the

people, Legislative Council of a state having such a Council, shall furnish full and complete information in regard to the matters specific by the Hon'ble Supreme Court and quoted in paras 13 and 14 above, in an affidavit, the format whereof is annexed hereto as Annexed - 1 to this order.

(2) The said affidavit by each candidate shall be duly sworn before a Magistrate of the First Class or a Notary Public or a Commissioner of Oaths appointed by the High Court of the State concerned.

(3) Non furnishing of the affidavit by any candidate shall be considered to be violation of the order of the Hon'ble Supreme Court and the nomination of the candidate concerned shall be liable to rejection by the Returning Officer at the time of scrutiny of nomination for such non furnishing of the affidavit.

(4) The information so furnished by each candidate in the aforesaid affidavit shall be disseminated by the respective returning officers by displaying a copy of the affidavit on the notice board of his office and also by making the copies thereof available freely and liberally to all other candidates and the representatives of the print and electronic media.

(5) If any rival candidates furnishes information to the contrary, by means of a duly sworn affidavit, then such affidavit of the rival candidate concerned in the manner directed above.

17. For the removal of doubt, it is

hereby clarified that the earlier direction contained in para 14(4) of the earlier order dated 28th June 2002 insofar as verification of assets and liabilities by means of summary enquiry and rejection of nomination paper on the ground of furnishing wrong information or suppressing material information is not enforceable in pursuance of the order dated 13th March, 2003 of the Apex Court. It is further clarified that apart from the affidavit in **Anexure-1** hereto referred to in para 16(1) above, the candidate shall have to comply with all the other requirements as spelt out in the Representation of the People (Third Amendment) Act, 2002 and the Conduct of Elections Rules, 1961, as amended by the Conduct of Elections (Amendment) Rules, 2002.

18. Insofar as elections to the Legislative Assembly and Legislative Council of the State of Jammu and Kashmir are concerned, the directions of the Election Commission contained in the preceding para 16 shall be deemed to have been issued under the provisions of section 138 of the Constitution of jammu and Kashmir which are akin to Article 324 (1) of the Constitution of India and vest the superintendence, direction and control of the conduct of all elections to either House of the Legislature of that State in the Election Commission.

19. All Returning Officers shall ensure that the copies of affidavit prescribed herein by the Commission shall be delivered to the candidates along with the forms of nomination papers as part of the nomination paper."

34. Having regard to the background in which

the direction or order has been issued by the Election Commission on 23rd March 2003, there is little doubt that the candidate as well as the Returning Officer are obliged to meticulously comply every singular direction issued by the Election Commission. Non-compliance thereof will have serious consequence on the election of the candidate.

35. Reverting to the facts of the case on hand, it is not a case of non-filing of affidavits along with the nomination forms as such. Had it been a case of "non filing of the requisite affidavits", the Returning Officer, at the scrutiny stage itself, would be within his right to straightaway reject the nomination paper, not accompanied by the mandatory affidavits which are now integral part of the nomination paper. To put it differently, nomination will be treated as validly accepted only if it were to be accompanied by the requisite affidavits of the candidate making necessary disclosures as provided in the prescribed affidavit. The disclosures to be made in such affidavit are expected to be truthful and complete

on the specified matters, which information will be then in public domain, if the person is desirous of offering himself to be the representative of the people. Insofar as his prospective voters are concerned, they have a "fundamental right" to receive complete and truthful information to enable them to make an informed choice of the candidate, so as to then exercise their statutory right to vote. Whereas, the right of the candidate to contest an election is "only his statutory right". The candidate is obliged to fulfil the constitutional aspirations of the voters and to uphold the constitutional mandate of conduct of free and fair election, to become eligible to contest the election. That is essential for the survival of democracy. Indeed, by virtue of the revised directions and the later decision of the Apex Court, the "Returning Officer" cannot reject the nomination form at the scrutiny stage by resorting to summary enquiry in respect of ground that the information furnished in the affidavits filed along with the nomination form is wrong or incomplete or amounts to suppression of any material information by the candidate to be a

defect of substantial character. That does not mean that the nomination of the candidate who has filed wrong or incomplete information or suppressed any material information in the affidavits accompanying the nomination form, which is a defect of substantive character, in law, would still be a properly accepted nomination. In a given case, the candidate may succeed in hoodwinking the Returning Officer by making a farce of having filed affidavits to comply with the direction of the Election Commission. The fact that the Returning Officer cannot go into the correctness of the claim of wrong or incomplete information or suppression of any material information in a summary manner, does not mean that a case of improper acceptance of nomination within the meaning of Section 100(1)(d)(i) of the Act, becomes unavailable to such a situation. Adjudication on those matters are deferred, to be considered in an Election Petition challenging the validity of the election of the concerned candidate on that ground. In such a Petition, the questions to be considered will be, whether there is any defect in the affidavits of the candidate accompanying the nomination paper and

if so, whether the defect is of substantive character resulting in misinformation and disinformation caused to the voters. If the finding on those issues were to be against the candidate, it will necessarily follow that it was a case of improper acceptance of his nomination. While considering those issues, it may give rise to contentious issues. Those matters which are not descrimible ex facie and could be disclosed only upon an enquiry and upon taking evidence on the relevant facts, will therefore have to wait, to be decided by the Court in the Election Petition while considering the challenge to the election of the concerned candidate on that ground.

36. According to the Respondent, in the Election Petition between the parties, the matter will have to be tested strictly on the basis of grounds specified by the Act. It is submitted that ground provided in Section 100(1)(d)(i) of the Act is of improper acceptance of any nomination. For considering that ground, the parameters provided in Section 36 of the Act of 1951 will govern the field. In that, as per Section 36(2), the

Returning Officer has to examine the nomination papers and decide all objections which are made to any nomination, on undertaking a summary enquiry and can reject the nomination only on the specified grounds referred to therein. Insofar as the case on hand is concerned, at best, ground specified in Clause (b) of sub-section (2) of Section 36 can be pressed into service. It is then contended that Section 34 of the Act has no relevance to the case on hand. Assuming that Section 33 of the Act was to be attracted, it postulates that the nomination papers to be filed before the Returning Officer after completing the same in the prescribed form. The prescribed form is to be found in the Conduct of Election Rules of 1961 being Form Nos.2A to 2E. Insofar as the information required to be disclosed in the prescribed Form is concerned, if the candidate has provided that information, the nomination cannot be rejected. If rejected, it will be a case of wrongful or improper rejection of nomination covered by Section 100(1)(c) of the Act.

37. In the first place, the above argument fails to notice that the two affidavits required to

be filed by the candidate along with the nomination form has been made mandatory by virtue of Law declared by the Apex Court, as also as per the directions issued by the Election Commission in exercise of powers under Article 324(1) of the Constitution on the basis of the Law so declared by the Apex Court. It is mandatory to file those affidavits along with the nomination form. The prescribed affidavits of the candidate, by interpretative process, form integral part of the nomination paper. This position is amply clear from the dictum of the Apex Court in Paragraph 58 of the Judgment in **Association for Democratic Reforms (supra)**, which is already reproduced in the earlier part of this Judgment. In no unmistakable terms, the Apex Court has directed the Election Commission to call for requisite information on affidavit, by issuing necessary order in exercise of its power under Article 324 of the Constitution of India, from each candidate seeking election to Parliament or a State Legislature "as a necessary part of his nomination paper" furnishing therein, specified information. In absence of affidavit, the nomination form will necessarily be treated as

incomplete and liable to be rejected even at the scrutiny stage by the Returning Officer. So far as that mandate is concerned, the same operates even now.

38. A priori, the expression ‘prescribed form’ referred to in Section 33 of the Act of 1951 will have to be construed as an inclusive term which would not only encompass the forms prescribed in the Rules of 1961 (Forms 2A to 2E), but also the affidavits to be filed by the candidate as per the law declared by the Apex Court which is binding in terms of Article 141 of the Constitution, as also the directions issued by the Election Commission in exercise of powers under Article 324. In the same manner, the expression "prescribed form" in Section 33 would obviously now include the information to be disclosed by the candidate in terms of amended Section 33A of the Act of 1951 which has come into force with effect from 24th August 2002. In fact, information in that regard is already provided in the prescribed affidavits of the candidate to be accompanied with the nomination paper. The Law declared by the Apex Court in **Association for**

Democratic Reforms (supra) as well as **PUCL's case (supra)** would prevail, having attained finality; the Election Commission, in compliance of the decisions of the Apex Court has issued directions in exercise of powers under Article 324(1) of the Constitution, which directions have been issued to fill the void in absence of suitable legislation to cover the field to effectuate the fundamental right to information of the voters in the Constituency to know the background and the complete antecedents of the candidate on relevant matters so as to take an informed decision and for upholding the constitutional mandate of conduct of free and fair elections. If it were to be held, as is contended by the Respondent, that filing of affidavits replete with wrong or incomplete information or suppression of any material information, even if it is a defect of a substantive character in the affidavit, cannot render the nomination form invalid, it will inevitably result in negating the Law expounded by the Apex Court on the basis of which directions have been issued by the Election Commission. In that, the candidates will then be free to file "any affidavits" they want, so as to

continue to disrobe the voters in their Constituency of getting complete and truthful information about them which inevitably affects their fundamental right to receive full and complete information of their candidates. The affidavit replete with misinformation or disinformation will be antithesis to free and fair election and only a miraj created by the candidate of namesake compliance of the directions of the Election Commission and the Law. That act of commission and omission would also result in non-compliance of the provisions of the Constitution or the Act or any Rules or Orders made under the Act.

39. It was then argued on behalf of the Respondent that the order issued by the Election Commission is in exercise of powers under Article 324 (1) of the Constitution and not an order issued under the Act of 1951. This submission proceeds on the basis of narrow construction of sub-clause (iv) of Clause (d) of Section 100(1). The expression "Orders made under this Act" occurring therein, will have to be given its natural meaning, so as to

include orders passed by the Election Commission in exercise of powers under Article 324(1) of the Constitution. Giving narrow construction to the said expression "this Act", to limit the orders issued only under the Act of 1951, would be a pedantic approach. Moreover, taking that argument to its logical end, would also mean that the Law declared by the Apex Court though breached, will be without any remedy. As noted earlier, by interpretative process, the affidavits to be filed by the candidate along with the nomination paper, by virtue of the Law expounded by the Apex Court as also the direction issued by the Election Commission in exercise of powers under Article 324(1) of the Constitution which is founded on the statement of law of the Apex Court, form integral part of the nomination form prescribed by the Rules. Thus understood, it will be a case of non-compliance of the provisions of the Act and the Rules. Besides, as the stated order passed by the Election Commission emanates from the duty to conduct free and fair elections envisaged by Article 324 of the Constitution, non-compliance of such an order would in that sense result in

non-compliance of the provisions of the Constitution. Keeping in mind the avowed purpose of disclosure of complete information of the candidate on affidavit, to be accompanied with the nomination form, is to effectuate the fundamental right of the voters in the Constituency, who are expected to elect their representative; there is corresponding constitutional obligation or duty of the candidate to make truthful and complete disclosure of information about himself in relation to his, his spouse's and dependants' assets, liabilities and criminal cases to enable the voters to make an informed choice of the right candidate in their assessment. A person who offers himself to become a public servant or representative of the public, has a constitutional duty to make truthful and complete disclosures of the specified matters. In a case of misinformation or disinformation caused on account of disclosures made by the candidate on affidavit, it can be nothing short of non-compliance of his constitutional obligation. The concomitant is that, such act of commission and omission would be covered by the sweep of Section 100(1)(d)(iv) of the Act as well, besides being a

case of improper acceptance of his nomination within the meaning of Section 100(1)(d)(i) of the Act. For, such act has significant bearing on the process of free and fair election and cascading effect on the survival of democracy. Accordingly, Issue No.4 will have to be answered in the affirmative.

ISSUES 5 AND 6 :

40. I shall now proceed to consider issue Nos.5 and 6 together as discussion in relation to these issues will be overlapping. The case made out by the Petitioner in the Petition or for that matter in his evidence, is that, the Respondent has filed two affidavits along with nomination form but those affidavits are replete with falsity. Inasmuch as, the Respondent has furnished wrong or incomplete information and suppressed material information. For that reason, the said affidavits are false, frivolous and no affidavit in the eye of Law. In other words, it is not the case that no affidavit has been filed by the Respondent along with the nomination form as such. The case,

however, is that, as the defect in the affidavits is of substantial character, the said affidavits were no affidavits filed by the Respondent, as were required to be filed as per the directions of the Election Commission and the decision of the Apex Court.

41. Indubitably, the affidavits are expected to be truthful and complete disclosure of the antecedents of the candidate so as to effectuate the constitutional obligation of conducting free and fair election and more importantly, to uphold the fundamental rights of the voters in the Constituency. Incomplete or wrong disclosures or disclosures made, resulting into misinformation or disinformation, affects the fundamental right of the voter who has to exercise an informed choice at the hustings of the election. Having regard to the avowed object for which the affidavits are required to be filed by the candidates along with the nomination paper, if were to suffer from defect of substantial character, would entail in *non est* affidavits in the eye of Law; and on that finding, it would necessarily follow that in law, the

nomination form was not accompanied by specified affidavits, though, in fact, such affidavits have been filed. On that finding, the inevitable conclusion will be that the election of the returned candidate is void.

42. The next moot question is: whether the Respondent has given wrong or incomplete information or has suppressed material information in and from the stated affidavits resulting in misinformation and disinformation to the voters.

RE : CRIMINAL CASE :

43. Going by the Election Petition, the first such allegation is found in Paragraph 9 of the Petition. It is stated that the information given in the two affidavits filed by the Respondent is contrary statement in relation to the pending criminal case No.12 of 1997. In one affidavit, it is stated that such case was pending, whereas in the other affidavit in the concerned column, it was declared that no criminal case was pending against the Respondent in any Court of Law.

44. The only allegation that can be culled out is that the Respondent made two contrary statements in the two affidavits filed by him along with the nomination form. In the examination-in-chief, in Para 8, the Petitioner has stated that in one affidavit, the Respondent gave information about the pending criminal case being criminal case No.12 of 1997 under Sections 143, 147, 149, 325, 336, 504, 506 of the Indian Penal Code and under Section 3(1) of the Atrocities Act pending in the Court of

Judicial Magistrate, First Class at Ulhasnagar, District Thane. The Petitioner has then stated that however, in the second affidavit filed by the Respondent along with his nomination papers, he made a declaration that there is no criminal case pending against him in any Court of Law. The latter was a contrary and false statement made by the Respondent in the second affidavit, out of the two mandatory affidavits filed by him along with the nomination form. The Petitioner has additionally relied on the evidence of PW 12 Ashok Ambadas Shingre, who was serving as Deputy Collector and Competent Authority, Ulhasnagar Urban Agglomeration, Thane since 2003. He had worked as the Returning Officer of 56, Ambernath Assembly Constituency. He has referred to the complaint filed by the Petitioner during the election process and the reply given by the Respondent thereto. The nomination form presented by the Respondent along with the two affidavits have been brought on record as Exhibit 1B. This document is admitted by the parties. The letter sent by the Petitioner dated 6th October 2004 to the Collector is also admitted by the parties and accepted as Exhibit ‘1C’. From

the two affidavits which are part of the nomination form Exhibit ‘1B’, the statement made by the Petitioner that the Respondent in the second affidavit has said no criminal case pending against him in any Court of Law, is correct.

45. However, the explanation offered by the Respondent in the written statement in Para 20 is that the second affidavit required disclosure of criminal case in respect of which cognizance has been taken by the Court of competent jurisdiction. As no charge was framed against the Respondent in respect of any criminal case, in the second affidavit, the Respondent mentioned that no criminal case in which, Court has taken cognizance or framed charge against the Respondent was pending against him. The Respondent in his evidence in Para 22 has reiterated the same position. Besides, the Respondent has asserted that the explanation offered by him in this regard was accepted by the Returning Officer during the scrutiny of nomination form which was done in the presence of all the contesting candidates. In respect of the latter stand taken by the Respondent, during the

cross-examination of the Respondent, he has been confronted with the letter dated 31st December 2004 sent by Tahsildar, Ambernath through Senior Police Inspector, Ambernath Police Station and the comparative statement/order of the Returning Officer. The Respondent has, however, explained that he has disclosed criminal case No.12 of 1997.

46. The stand taken on behalf of the Respondent is substantiated from the columns providing for the details to be disclosed in the two affidavits. Insofar as the first affidavit is concerned, the candidate is required to disclose the criminal case against him in which "charge-sheet has been filed". Whereas, in the second affidavit, the candidate is required to disclose the name of the Court which has taken cognizance of any criminal case. Obviously, there is marked difference between the two disclosures. According to the Respondent, mere filing of charge-sheet does not result in Court taking cognizance and for that reason, the details of the criminal case though referred to in the first affidavit did not find place in the second

affidavit. The Respondent in Paragraph 22 of his evidence, has explained this position and about his own understanding of the requirement under the two affidavits.

47. The question is: whether the explanation offered by the Respondent deserves to be accepted? There is force in the argument of the Respondent that the column against which disclosure regarding any pending criminal case as given in the two affidavits is somewhat different. In the second affidavit filed by the Respondent, what was required to be disclosed is the information about the pending criminal case in which the competent Criminal Court has taken cognizance. It is not the Petitioner’s case that there was some other criminal case other than the one disclosed by the Respondent in his first affidavit or for that matter, that the Criminal Court had already taken cognizance in respect of that criminal case which necessitated its disclosure even in the second affidavit. On the other hand, the Respondent asserts that the Criminal Court had not taken cognizance of the said criminal case till the

filing of the nomination form. As there is plausible explanation offered by the Respondent, coupled with the fact that it is not a case of non-disclosure or misinformation or disinformation as such, there is no merit in the Petitioner's case that the affidavits filed by the Respondent along with the nomination form were defective. Assuming that there is some discrepancy or error which has crept in the disclosure made by the Respondent, in my opinion, it is not a substantive defect in the affidavits insofar as this allegation is concerned.

RE : NON-DISCLOSURE OF GOVERNMENT DUES:

48. That takes me to the next aspect as stated in Para 10 of the Petition. The Petitioner has stated that the Respondent has failed to disclose material facts in the nomination form. One of the disclosure which was required to be made by the Respondent, was about liabilities/over dues to public financial institutions and Government dues. It is the case of the Petitioner that the Respondent suppressed the fact that the Respondent was in arrears in respect of two electricity meters

standing in his name issued by the Maharashtra State Electricity Board (M.S.E.B.). The outstanding amount in respect of one electricity meter was Rs.79,200/- (Rupees Seventy-nine Thousand Two Hundred) and in respect of the second meter - Rs.66,250/- (Rupees Sixty-six Thousand Two Hundred Fifty) due and payable to M.S.E.B. which was a Government Undertaking. The Petitioner along with the Petition has produced letter issued by the Executive Engineer to M.S.E.B. for Kalyan rural area dated 4th October 2004 (Exhibit D to the Petition) confirming the fact that the Respondent was liable to pay the aforesaid amounts in respect of two separate electricity meters issued in his name by M.S.E.B. During the evidence, in Paragraph 9 of the examination-in-chief, the Petitioner has reiterated this position and has proved the letter received by him from the Executive Engineer, M.S.E.B. dated 4th October 2004 which is annexed as Exhibit ‘D’ to the Petition and later on marked as Exhibit ‘AAH’ in evidence. He has further stated that the Respondent has admitted the fact of outstanding dues towards electricity bills payable to the M.S.E.B. The Petitioner has further stated

that if this fact was disclosed by the Respondent in the affidavits filed along with the nomination form, the voters in the Constituency would have known that the Respondent was a defaulter in respect of the Government dues, though he has amassed wealth and because of this suppression, the election of the Respondent has materially affected.

49. The Respondent, however, in his written statement in Paragraph 21, has stated that factually, it is true that the two electricity meters are located in the property held by him at Village Chincheshwari Pada. He has then explained that one meter is located in his bungalow where he resides along with his family and the other is located in the premises which are given on rent to his tenants who are residing therein along with their families. The Respondent then asserts that because of defective meter reading the bills charged were excessive, for which reason, the Respondent and his wife had sent letters dated 29th November 2003, 15th December 2003, 12th May 2004, registering their protest or complaint to the M.S.E.B. Officials, Kulgaon-Badlapur requesting

them to carry out inspection of the meters and issue fresh bills. It is the case of the Respondent that the Deputy Executive Engineer later on inspected the meter and sent the meter for testing to the Meter Testing Unit. It is the case of the Respondent that in the interregnum, the M.S.E.B. Officials did not issue any corrected bill and that the amount referred to in the bills already received being disputed, cannot be termed as arrears as on 20th September 2004, the date of filing nomination form. It is the case of the Respondent that during the course of discussion with the M.S.E.B. Officials, the M.S.E.B. Officials agreed to visit the Respondent’s premises to find out the correct situation of the meter and further verbally directed Respondent to first deposit amount of Rs.79,200/-, for which reason, on 30th September 2004, that amount came to be deposited with M.S.E.B. Officials. It is the case of the Respondent that on 23rd November 2004, the M.S.E.B. Officials examined the meters in view of the complaint made by the Respondent. It is the case of the Respondent that the Meter Testing Unit of M.S.E.B. recently found that the meter was

defective as it has been found that it runs faster. Communication in that behalf is sent by M.S.E.B. on 14th March 2005 to the Respondent. Insofar as the second electricity meter in respect of which outstanding bills of Rs.66,250/- is concerned, the Respondent states that he was not liable to pay the same as the electricity was consumed by his tenants and it was the primary liability of the tenants to pay that amount. According to the Respondent, therefore, as he was not himself in arrears in respect of the said electricity meter, it was not a case of non-disclosure. The Respondent in his examination-in-chief in Para 23 has reiterated the above stand.

50. The Petitioner in support of this allegation has not only examined himself, but also examined Babasaheb Waghambare (PW 4), who is stated to be working as Junior Engineer in M.S.E.B. The fact that there were two outstanding bills on the date of filing nomination paper i.e. 20th September 2004, shown in the record of M.S.E.B., against the name of Respondent in respect of two separate electricity meters, one for Rs.79,200/-

(Rupees Seventy-nine Thousand Two Hundred) and other for Rs.66,250/- (Rupees Sixty-six Thousand Two Hundred Fifty), has been duly established. Even the Respondent has not disputed this position. However, the Respondent has offered explanation as referred to earlier for not disclosing the fact about the two pending electricity bills in the affidavits filed along with the nomination form. It may be mentioned that both sides have produced documents in support of their respective stand. The question is: whether the explanation offered by the Respondent deserves to be accepted?

51. The defence of the Respondent is in two parts. Insofar as the electricity meter in the bungalow occupied by the Respondent and his family in the sum of Rs.79,200/- (Rupees Seventy-nine Thousand Two Hundred) is concerned, it is his case that the meter was defective and complaints in that behalf were made to the M.S.E.B. Officials from time to time. The Petitioner has no doubt challenged the stand of the Respondent that representations were made by the Respondent as contended. However, I shall proceed on the

assumption that the Respondent and his wife made complaints to the Officials of the M.S.E.B. regarding defective meters. The fact remains that as on 20th September 2004, when the nomination form was filed by the Respondent, on that date, he was in arrears of dues payable to the Government Undertaking towards outstanding electricity bills in respect of the electricity meters issued in his name. The fact that there was controversy about the demand raised by the M.S.E.B., would make no difference. The Respondent had duty to disclose the outstanding amount payable by him to Government Undertaking (M.S.E.B.) as per the said demand. At best, he could have noted that this amount is a disputed amount. The Respondent was obviously conscious that the electricity bill was pending and was required to be paid. The Respondent accordingly paid the amount of Rs.79,200/- (Rupees Seventy-nine Thousand Two Hundred) on 30th September 2004, which is after filing of the nomination form. It is the case of the Respondent that it was paid under protest and on the oral advise of the Official of the M.S.E.B. The Respondent further asserts that eventually the

meter was found to be defective. The opinion recorded by the Official of the M.S.E.B. even if accepted as it is, would indicate that the meter was running fast to the extent of 10% only. It necessarily follows that the bill amount at least to the extent of 90% was legitimate and payable by the Respondent to M.S.E.B. on the date of filing of the nomination form. Suffice it to observe that the explanation offered by the Respondent is afterthought and cannot absolve the Respondent of the charge of non-disclosure of the outstanding amount payable to the Government Undertaking (M.S.E.B.).

52. The Respondent No.1 during his cross-examination in Para 6, admits that around the date of filing nomination form, there were dues to be paid towards outstanding bill in his name. He further admits that the outstanding bill pertained to the house where he was staying and was for period from 2003 onwards. According to him, dispute was raised by him since 29th November 2003. He, however, admits that he was receiving regular bills from M.S.E.B. but asserts that after dispute

was raised in November 2003, no bill was received from M.S.E.B. He has reiterated his case made out in the written statement that he regularly made representations to M.S.E.B. since November 2003 regarding faulty meter. He has stated that he deputed his emissary to M.S.E.B. Office to take corrective measures at the earliest and at that time, the Official orally informed that he should first pay the outstanding bill, only then his complaint will be entertained. It is for that reason, it became necessary for him to pay the amount of Rs.79,200/-, which was paid on 30th September 2004 after filing of nomination paper. It was suggested to Respondent that he paid the amount after having learnt that there was complaint made to the Election Officer about non-payment of electricity bills. It is also suggested to the Respondent that even much earlier, the M.S.E.B. Officials had asked to pay the outstanding bill under protest if he so desired, which suggestions, however, have been denied by him.

53. As mentioned earlier, Petitioner has examined Babasaheb Waghambare (PW 4) who has

substantiated the case made out by the Petitioner about the outstanding electricity bills payable by the Respondent to M.S.E.B. on the date of filing of the nomination form. Besides the version of PW 4, the documents on record also support that position. In fact, the Respondent himself concedes that position as is noted earlier. The cross-examination of this witness broadly proceeds on the line that Respondent had raised dispute in relation to excess billing and defective meter which was pending consideration and that, eventually, the Respondent has been informed on 14th March 2005 by the Officials of the M.S.E.B. that the meter was running 10% fast and the bills could be corrected accordingly. That communication was sent after the inspection report dated 29th December 2004 and the meter testing result dated 12th March 2005. Significantly, PW 4, during cross-examination in Para 7 has stated that the bill of Rs.79,200/- is disputed one, however, as per his record, the same is not shown as disputed. He, however, explained that the record is kept at the main Office and that issue pertains to Billing Department and Technical Department.

Interestingly, to the suggestion at the instance of the Respondent in the same Paragraph 7, during cross-examination, this witness has stated that it is correct to say that as the amount is disputed one, it does not mean that the entire amount was outstanding one, but to some extent, the bill was in arrears.

54. Significantly, the fact that the Respondent was in arrears of electricity bills on the date of filing of the nomination form is not only conceded in the written statement but the cross-examination of PW 4 also proceeds on that basis. As mentioned earlier, even accepting the case of the Respondent that he and his wife raised dispute regarding the pending electricity bill of Rs.79,200/- and defective meter since November 2003, even then, there was no justification for the Respondent to withhold the entire electricity bill. The Respondent eventually paid that amount on 30th October 2004, purportedly under protest, which he could have done even earlier to filing of the nomination form. There is force in the case suggested by the Petitioner to the Respondent that

he chose to pay the amount on 30th October 2004 having learnt about the complaint received by the Returning Officer in that behalf against him in relation to the outstanding electricity bills.

55. The defence of the Respondent that he was orally advised by the Officials of the M.S.E.B. not to pay the amount is only his bare word and unsubstantiated. The name of the Official who advised the Respondent in that behalf is not disclosed nor any such Officer has been examined by the Respondent. Significantly, even the case as made out from the evidence of the Respondent is that the meter was subsequently found to be running fast to the extent of only 10%. That concludes the issue against the Respondent. For, the Respondent was undisputedly in arrears of the bill to the extent of at least 90% on the date of filing of the nomination. Moreover, as observed earlier, nothing prevented the Respondent to disclose the fact of outstanding electricity bill with a note that it was pending review of the M.S.E.B.

56. The question is: whether non-disclosure

of such outstanding electricity bill payable to Government Undertaking is a technical defect or a substantive one? This can be straightaway answered by adverting to the format of the affidavits to be filed along with the nomination form. The affidavits clearly require the candidates to disclose the bills of his liabilities/overdues to Public Financial Institution and Government dues. There was no reason for the Respondent not to make such disclosure. Non-disclosure of this information which is very vital to enable the voter to form his opinion about the candidate's antecedents results in misinformation and disinformation and influencing the voters to take an uninformed decision.

57. Accordingly, I have no hesitation in taking the view that it is a case of non-disclosure of liability in respect of outstanding electricity bills payable to Government Undertaking (M.S.E.B.); and that non-disclosure is a substantive defect in the affidavits filed along with nomination form. The test to hold that the defect is substantive, in my opinion, is not the amount involved, but the

conscious act of non-disclosure and suppression of that fact. It would be a case of technical defect if there was some clerical error in the information disclosed by the candidate or for that matter, a case of omission due to lack of knowledge of existence of such dues. In the present case, the Respondent was conscious and aware of the fact that on the date of filing of the nomination form, there were two outstanding electricity bills in relation to two meters standing in his name, payable to M.S.E.B. It would have been a different matter if the Respondent was unaware of that fact or that no such bill was ever issued by the M.S.E.B. That is not the case of the Respondent. Thus understood, non-disclosure about the outstanding electricity bill in the sum of Rs.79,200/- payable by the Respondent to M.S.E.B. is a substantive defect in the affidavit. Resultantly, the nomination form filed along with such affidavit would become tainted and for which reason, it will have to be held that the same has been improperly accepted within the meaning of Section 100(1)(d)(i) of the Act. Besides, the candidate has failed to comply with the requirements of the order issued by the

Election Commission in exercise of powers under Article 324(1) of the Constitution of India which order is founded on the Law declared by the Apex Court in the case of **Union of India vs. Association for Democratic Reforms (supra)** and binding under Article 141 of the Constitution, therefore, affecting his nomination as well as the Election being void under Section 100(1)(d)(iv) of the Act.

58. That takes me to the case in relation to the second outstanding electricity bill in the sum of Rs.66,250/- (Rupees Sixty-six Thousand Two Hundred Fifty). Even with regard to this bill, the stand of both sides in the pleadings as well as in the evidence is common. The additional defence of the Respondent which needs to be considered in respect of this Bill, is that the same pertain to premises which have been let out by the Respondent to his tenants and the electricity bills are in relation to such premises, for which reason, the primary liability of payment of that bill was on the tenants and not the Respondent. In the first place, it is not in dispute that the electricity

meter stood in the name of the Respondent in relation to which the outstanding bill in the sum of Rs.66,250/- was payable on the date of filing of nomination i.e. 20th September 2004. It is also not in dispute that the electricity meter has been installed in the premises owned by the Respondent. In Law, therefore, it is the Respondent who was liable to be proceeded for recovery of the said amount.

59. To get over this position, however, the defence is that the premises in which the said electricity meter has been installed are tenanted premises which were being used by the tenants and their family members. The Respondent to make good this position, has examined one Anant Gulabrao Deshmukh (RW 3), who is one out of the two tenants occupying the said premises. This witness states that the building in which the said electricity meter is installed and where the tenanted premises are located is a chawl-type structure consists of five tenements. He states that out of the five tenements, three are vacant and locked and two are occupied by tenants. One is occupied by tenant

Malti Devidas Khadse and the other by himself. He has stated that he was paying Rs.300/- (Rupees Three Hundred) per month in addition to the actual electricity bill to be paid by sharing it with the other tenants. He also states that he was not particular about the payment of rent and that the Respondent has also not kept any account in that behalf. He states that the Respondent accepted the rent as and when tendered by him. He has stated that apart from the rent, he was paying the electricity bill of the chawl and the said bill was shared by him and the other tenant Mrs.Khadse. He states that during the period of 2003, huge bill for Rs.66,250/- was raised by the M.S.E.B. and there was default on their part in payment of the said bill. As a result, the electricity meter has been disconnected in February 2005 for non-payment of the said bill. In the cross-examination, this witness has stated that he was occupying the tenanted room for last fifteen years. He has stated that the chawl in which the said room is situated is within the complex of the bungalow where the Respondent is staying along with his family. He has given the description and location

of the bungalow. The credentials of this witness have been challenged by the Petitioner during the cross-examination. It was suggested to him that the ration card was issued to him, for the first time, in the year 2000. It was suggested to him that he was working with the Respondent, but he has asserted that he was self occupied and working as a rickshaw driver. He has asserted that he was tenant of the Respondent and was paying monthly rent to the Respondent. However, in the first place, he stated that he was not in a position to produce rent receipts in Court on that day, but soon, corrected himself by giving voluntary statement that the tenants never collected rent receipts from the Respondent and he will not be able to produce rent receipts to establish the fact that he was occupying the room for last fifteen years. He has stated that the room occupied by him was admeasuring 10’ x 15’. He then states that there was no Tenancy Agreement executed between the parties in relation to the premises occupied by him. He has admitted that he did not separately pay amount towards tax but took the responsibility of paying electricity bills only. He admits that

electricity bills were not received in his name; whereas, the same were received in the name of the Respondent. He has stated that he had regularly paid the electricity bills from time to time. He has then stated that around four to five years back, he came to know that there was outstanding electricity bill and two years back, the electricity supply to his premises was disconnected on account of unpaid bills. The witness has been confronted with the fact that he was staying in the premises since last two years without electricity, which has not been mentioned by him in the examination-in-chief. He has then admitted that he was not aware as to from which period the outstanding amount of Rs.66,250/- was pending. He has then stated that the outstanding electricity bill has now been paid. He asserts that he used to directly pay the electricity bill to the M.S.E.B. even though the bill was in the name of the Respondent. It was suggested to him that he was deposing before the Court only to support the case of the Respondent and was deposing falsely at the instance of the Respondent.

60. After careful analysis of the evidence of RW 3 Anant Gulabrao Deshmukh, it is obvious that he is interested witness and has deposed at the instance of the Respondent. He is not in a position to produce any Tenancy Agreement or the rent receipts, nor has he produced any receipt issued by the M.S.E.B. for payment of electricity bills "made by him" in the past. Besides, he has not produced the receipt for payment of the last outstanding bill or spoken as to who has paid the entire amount of Rs.66,250/-. The fact that he was paying the electricity bills directly to M.S.E.B. has not been established. Although he claims that the tenants have taken the responsibility of payment of electricity bills in respect of the tenanted premises, there was no such liability with regard to payment of corresponding municipal taxes, which seems to be somewhat unusual. Be that as it may, this witness (RW 3) also reiterates that only two units out of five tenements were occupied by the tenants and the remaining three units were kept locked and unused. Obviously, those three units are in possession of the Respondent. It is nobody’s case that sub-meters have been installed

in each of the units to ascertain the actual electricity consumption by the respective tenant. If all the tenants were to share the electricity bills equally, irrespective of the actual consumption by them, obviously, the Respondent who is in possession of three units out of the five units, would be liable to contribute towards the electricity bills which are primarily issued in the name of the Respondent, as the electricity meter stands in the name of the Respondent.

61. In any case, the evidence of RW 3 does not take the matter any further for the Respondent. I have no hesitation in taking the view that the Respondent has not been able to dispel the allegation that the Respondent was liable to pay the outstanding electricity bills in respect of the second electric meter issued in his name which is installed in the premises owned by him. As the electric meter stands in the name of the Respondent and has been installed in the premises which is part of the complex in which the Respondent is staying along with his family, in law, it is the Respondent who remains responsible and liable to

pay the dues in relation to such electricity bill. In any case, the fact that the tenants were required to contribute for the electricity used by them in their respective units, would not absolve the Respondent from disclosing the fact of liability to pay the electricity dues in relation to the electricity bills pertaining to the electric meter issued in his name by M.S.E.B. The Respondent was, therefore, obliged to disclose the outstanding amount in relation to such electricity bills in the affidavit with a note or explanation that he wanted to offer. Suffice it to observe that non-disclosure of outstanding electricity bills in respect of the electricity meter installed in the name of the Respondent in the chawl owned by him, which is in the same complex where he was residing with his family, is also a substantive defect in the affidavit. In that, the material fact has not been disclosed by the Respondent and has been suppressed from the voters resulting in disinformation and misinformation. As a result, for the same reason as indicated in relation to the non-disclosure of the other outstanding electricity bill, it will have to be held that it is a case of

improper acceptance of nomination of the Respondent within the meaning of Section 100(1)(d)(i) of the Act as also a case falling under Section 100(1)(d)(iv) of the Act.

RE : NON-DISCLOSURE OF BUNGALOW NO.866 IN THE NAME OF SPOUSE AND OUTSTANDING TAXES THEREOF:

62. That takes us to the next allegation in the Petition as contained in Para 11 of the Petition. It is asserted by the Petitioner that in the affidavit filed by the Respondent along with the nomination form, he has suppressed the immovable property belonging to the Respondent and his spouse, namely, his wife Mrs.Kamal Kishore Kathore. The Petitioner states that the bungalow No.866 at Badlapur in the limits of Kulgaon-Badlapur Municipal Council stands in the name of Kamal Kishore Kathore, wife of the Respondent. But that fact has been suppressed by the Respondent in the affidavit. It is then stated that there were outstanding municipal dues payable in respect of the said bungalow in the sum of Rs.3,465/- to Kulgaon-Badlapur Municipal Council,

which fact has also been suppressed by the Respondent in the affidavit though required to be disclosed. The Petitioner asserts that the crucial information regarding immovable property owned by his wife has been suppressed in the affidavit, for which, the affidavit was defective affidavit and no affidavit in the eye of law. As a result, the nomination form of the Respondent deserves to be rejected. The Petitioner, to support his claim, has relied on the letter issued by the Chief Officer of Kulgaon-Badlapur Municipal Council dated 28th October 2004 marked as Exhibit ‘E’ to the Petition which clearly stated that bungalow No.866 is standing in the name of Kamal Kishore Kathore within the boundaries of Kulgaon-Badlapur Municipal Council. The area of the said house is 80 square meters and by the end of year 2004-2005, house tax of Rs.3,465/- (Rupees Three Thousand Four Hundred Sixty-five) was due and payable in respect of the said property. It is further stated in this letter that the owner has not paid the house tax till the end of 20th September 2004, but has paid arrears of Rs.1,783/- (Rupees One Thousand Seven Hundred Eighty-three) for 2003-2004 under receipt No.9916

dated 28th October 2004.

63. The Respondent in his written statement in Para 22 has dealt with this allegation. According to him, factually the properties within the Municipal limits of Kulgaon-Badlapur Parishad were required to put to revaluation and re-assessment for the purpose of assessing the taxes. He further states that for the year 2003-2004, the measurement of the properties was undertaken to assess the taxable value by the Assistant Director, Town Planning, Thane District, Thane. He has then stated that the objections were raised not only by him but also by the other villagers and respective political parties for reassessment and revaluation of the property located within the municipal limits. He has stated that no demand notices were issued by the Municipal Authority and that hearing regarding reassessment took place on 28th December 2004 before the Collector. He has stated that after the completion of the assessment work, the Municipal Authority has issued tax demand notices. Therefore, he has not suppressed any material fact as alleged by the Petitioner. He further asserts

that he was very punctual in payment of Government dues and was never in arrears.

64. In the first place, the Respondent, except generally denying all the contents of Paragraph 11 of the petition in toto, has not specifically dealt with the case made out by the Petitioner that bungalow No.866 at Badlapur was owned by the Respondent's wife and has not been disclosed in the affidavit, rather suppressed the said immovable property. Counsel for the Respondent would argue that the Respondent has already denied all the allegations in toto and would include the denial of allegation of suppression regarding non-disclosure of the said immovable property in the affidavit filed along with the nomination. This contention clearly overlooks the requirements of specific pleading and specific denial by the Respondent as is required by the provisions of Order VIII Rules 2 to 5 of Code of Civil Procedure, 1908. Rule 2 clearly provides that the Defendant must raise by his pleading all matters which show the Suit not to be maintainable, or that the transaction is either void or voidable in point of law, and all such

grounds of defence as, if not raised, would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the Plaint, as, for instance, fraud, limitation, release, payment, performance or facts showing illegality. Rule 3 of Order VIII postulates that it shall not be sufficient for the Defendant in his written statement to deny generally the grounds alleged by the Plaintiff, but the Defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages. Rule 4 of Order VIII stipulates that the Defendant must not deny the allegation of fact evasively but answer the point of substance. Rule 5 of Order VIII also mandates that every allegation of fact in the Plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the Defendant shall be taken to be admitted except as against a person under disability.

65. The allegation of the Petitioner in the Election Petition that the Respondent has suppressed information regarding the said immovable

property belonging to his wife pertaining to bungalow No.866 at Badlapur, which was required to be disclosed in the affidavit filed along with the nomination paper, has not been specifically denied by the Respondent. Assuming that this Court were to examine the matter further, it is not the case of the Respondent that no such property was owned by his wife. In fact, the Respondent admits that the said property is owned by his wife. All that the Respondent has denied in the written statement is about any liability to pay municipal taxes in respect of the said property on the day of filing of the nomination form.

66. The allegations in Para 11 is broadly in two parts. The first is about non-disclosure of the immovable property being bungalow No.866 at Badlapur owned by the Respondent’s wife. The second is regarding outstanding dues in relation to the said bungalow on the date of filing of the nomination form and of non-disclosure thereof in the affidavit filed along with the nomination form. Insofar as the first allegation is concerned, there is no denial at all. Moreover, no specific plea

has been taken in the written statement by the Respondent as to why such disclosure was not made. Insofar as the second allegation is concerned, the Respondent merely explains the circumstances in his written statement as to why the municipal taxes in relation to that property have not been paid. The fact that the municipal taxes were paid in part on 28th October 2004 after the date of filing of nomination in the sum of Rs.1,783/- pertaining to year 2003-2004, is common ground. In other words, on the date of filing of the nomination on 20th September 2004, the Respondent's wife was in arrears of municipal taxes at least to the extent of Rs.1,783/- and which amount has been paid under receipt No.9916 only on 28th October 2004, is conceded. In that sense, the Respondent was obliged to disclose the outstanding Government dues payable in respect of the immovable property owned by his spouse in the affidavit filed along with the nomination form. This is the status of the pleadings. In fact, the issue under consideration can be straightaway answered against the Respondent on the above basis.

67. Nevertheless, we shall now turn to the evidence produced by the respective parties in relation to this allegation. The Petitioner has examined himself. In Paragraph 10 of the affidavit in lieu of examination-in-chief, he has reiterated the position stated by him in paragraph 11 of the Petition which is referred to earlier. He has proved the document being letter received by him from the Chief Officer of Kulgaon-Badlapur Municipal Council dated 28th October 2004 which is appended as Exhibit 'E' of the Petition. The cross-examination of the Petitioner (PW 1), by the Respondent, is directed to question the estimation of the Petitioner in relation to the value of the house property. It is also suggested to the Petitioner that because of increase in the rate of property taxes, there was agitation in the locality of Badlapur, for which reason, no notice of the property tax were sent by the Municipal Authority. In other words, there is hardly any cross-examination worth the name to challenge the assertion of the Petitioner that the Respondent's wife owned bungalow No.866 at Badlapur or that there was overdue municipal taxes payable in

respect of the said bungalow.

68. The Petitioner has also relied on the evidence of Prakash Narsinhrao Morse (PW 11) to support his case that there were outstanding municipal taxes payable in respect of bungalow No.866 standing in the name of Kisan Kathore and 866/4 standing in the name of Kamal Kathore. The actual rateable value of the respective properties has been stated by him to be Rs.5,040/- (Rupees Five Thousand Forty) and Rs.5,940/- (Rupees Five Thousand Nine Hundred Forty) respectively. The documents which have come on record would support the case of the Petitioner that there were outstanding dues in respect of house owned in the name of the Respondent’s wife Kamal Kisan Kathore. That position has been stated in the letter issued by Chief Officer of Kulgaon-Badlapur Municipal Council dated 28th October 2004 Exhibit ‘E’ to the Petition that the house bearing No.866/4 was in the name of Respondent’s wife Kamal Kisan Kathore within the boundaries of Badlapur Municipal Council; there were outstanding municipal taxes payable in relation to the said property in the sum

of Rs.3,465/- (Rupees Three Thousand Four Hundred Sixty-five) up to the end of year 2004-2005; and that the owner has not paid amount till the end of 20th September 2004, whereas, has paid Rs.1,783/- for the period 2003-2004 under receipt No.9916 dated 28th October 2004. This document has gone unchallenged. It is obvious that the Respondent's wife who was the owner of bungalow No.866/4 at Badlapur was in arrears on 20th September 2004, the date on which Respondent filed his nomination, to the extent of Rs.3465/-. The Respondent's wife, however, paid sum of Rs.1,783/- on 28th October 2004 for the period 2003-2004.

69. Even accepting the case of the Respondent that no demand notice was received by the Municipal Council for the subsequent period, it is obvious that on the date of filing of nomination on 20th September 2004, the Respondent's wife was in arrears of municipal taxes in relation to house No.866/4 at Badlapur, which liability has been discharged by paying amount of Rs.1,783/- on 28th October 2004, which pertains to period 2003-2004. Thus understood, the Respondent was obliged to

disclose this fact in the affidavit to be filed along with the nomination form which was to be integral part of the nomination form.

70. There are other documents which have come on record being correspondence between the Chief Officer and the Respondent or his wife including house tax receipt dated 8th December 2004 for Rs.1782/- by Kamal Kisan Kathore Exhibit ‘AG’ and house tax receipt dated 28th October 2004 for Rs.1,783/- of Kamal Kisan Kathore Exhibit ‘AH’. However, it is not necessary to burden this Judgment by referring to all those documents.

71. Suffice it to observe that the Respondent has not been able to dispel the allegation on both the counts, namely, that he has not disclosed the fact that house No.866/4 at Badlapur was owned by his wife Kamal Kisan Kathore as also the fact that there was outstanding municipal taxes payable by her in relation to the said house on the date of filing nomination on 20th September 2004.

72. Insofar as non-disclosure of the immovable

property owned by the Respondent's wife, it was argued that there has been substantial compliance of the requirement as the Respondent in the affidavit has disclosed the value of all the properties owned by the Respondent and his spouse in the sum of Rs.11,10,000/- (Rupees Eleven Lakhs Ten Thousand) situated at Badlapur and Bhagaon. In the first place, no such case is made out in the written statement. Indeed, in the affidavit filed along with the nomination form against the column of immovable properties, the Respondent has disclosed the properties at Badlapur and Bhagaon valued at Rs.11,10,000/-. Significantly, the amount is shown against column 'self'. It is not mentioned that the value of the properties so disclosed is owned by both - the candidate and his spouse. Moreover, no details about the location, survey number, area or other such details of the respective properties are spelt out in the affidavit, which was imperative as per the prescribed affidavit. The requirement to disclose all the assets including all relevant information in relation to each of the assets owned by the candidate as well as his spouse and his dependants,

to borrow the words of the Apex Court, is to pave way for free and fair elections. That is the means of empowering the voters to assess their candidate, considering his background and related matters. The avowed purpose for which such disclosure is required to be made is to uphold the fundamental right of the voter. By generally mentioning the names of the villages and the total value of the properties, provides no qualitative information to the voter. Such disclosure in a given case, even if truthful, is not a complete disclosure. Such disclosure would negate the avowed purpose of requiring the candidate to make disclosure which is for facilitating the voter to form an informed opinion about the antecedents of the candidate and to make a right choice. In other words, such disclosure will have to be labelled as vague and misleading disclosure, as it only informs the voter about the name of the village in which the properties are situated and total value thereof. The voter will be left to surmise as to which property is covered by the value of the property mentioned in the concerned column in the affidavit filed along with the nomination form. To ensure

free and fair election, the candidate is expected to give full and complete details with regard to each of immovable property owned by him such as the name of the building, the area in which that building is located, including the survey number as well as the size or area of the property and lastly, the estimated market value of the respective property. The format of the affidavits obligates the candidate to give all these details. The candidate cannot get away by merely giving vague description of the villages and the total value of all his properties. In a given case, a candidate may have four properties in one village or one city, would choose to vaguely mention only the name of the city for example, Mumbai without giving other details and also indicate the value of the property. Such information will be obviously unintelligible for the voter to make a correct assessment about the candidate. One voter will ascribe the value of the property to property ‘X’, the other to property ‘Y’. Such vague disclosure by the candidate would mislead the voter resulting in misinformation and disinformation and the candidate can get away with non-disclosing "all the

assets" and the "true value of the property" owned by him and his spouse and his dependants.

73. Significantly, in the affidavit in lieu of examination-in-chief, the Respondent has admitted in Para 13 that there are some errors in giving some information in particular columns or some errors in the name are there. However, he has stated that none of them are intentional one and are inadvertently written in the respective columns. According to him, the same are technical errors which were noticed after reading the grounds in the present Petition. In the first place, the Respondent admits that there are errors in giving information in the nomination forms and the accompanying affidavits filed therewith. The Respondent, however, states that the errors are not intentional one and have occurred due to inadvertence. The fact remains that it is not the case of the Respondent that he had no knowledge about the existence of such property in the name of his wife or the outstanding municipal taxes. In Para 24 of the affidavit in lieu of examination-in-chief, the Respondent has virtually

restated the case made out in the written statement, which is already adverted to earlier. The Petitioner, during the cross-examination of the Respondent attempted to bring on record that the assessment of the bungalow was to be done on the basis of area of the property, its location and other matters to ascertain the market value thereof. The Petitioner, on the other hand, not only examined himself but also PW 11, PW 14 and PW 15. On analysing evidence of these witnesses, there is substance in the case made out by the Petitioner in Para 11 of the Petition that the Respondent failed to disclose the fact that his wife was owner of the bungalow being house No.866/4 at Badlapur and also the fact that she was in arrears of municipal taxes on the date on which the Respondent filed his nomination form on 20th September 2004.

74. Insofar as the present case is concerned, as is mentioned earlier, the fact asserted by the Petitioner is that the Respondent has not disclosed the ownership of his wife in relation to house No.866/4 in the affidavit "at all". That

allegation has remained unchallenged and undenied. In my opinion, therefore, there is substance in the stand taken on behalf of the Petitioner that the affidavit filed by the Respondent along with the nomination paper is only to do lip-service and is no affidavit at all as is required by the mandate of law or the order issued by the Election Commission which is founded on the Law declared by the Apex Court. As the affidavit filed by the Respondent along with the nomination form suffers from this substantive defect, the nomination of the Respondent has been improperly accepted within the meaning of Section 100(1)(d)(i) of the Act. Besides, the election of the Respondent was void also on account of non-compliance of the order passed by the Election Commission under Article 324 of the Constitution of India, which is founded on the Law declared by the Apex Court under Article 141 of the Constitution of India, within the meaning of Section 100(1)(d)(iv) of the Act.

RE : NON-DISCLOSURE OF PROPERTY OWNED BY SPOUSE AT BHILKHEDE:

75. We shall now turn to the allegation contained in Para 12 of the Petition. It is the case of the Petitioner that wife of the Respondent Kamal Kisan Kathore had purchased immovable property in Bhilkhede, Taluka Jamner, District Jalgaon, along with Smt.Vimal Gokul Patil in the year 2000 for a sum of Rs.4,42,000/- (Rupees Four Lakhs Forty-two Thousand) under a registered Sale Deed registered with the office of the Sub-Registrar, Jamner, District Jalgaon. The said property is a landed property admeasuring bout 15 acres purchased from one Jagannath Trimbak Kulkarni residing at post Nachankhede, Taluka Jamner, District Jalgaon. It is further stated that during the relevant time, the wife of Respondent along with said Vimal Gokul Patil also purchased another immovable property for a sum of Rs.70,000/- (Rupees Seventy Thousand) from one Jahangir Ahmed Patel admeasuring about 84 acres. The Petitioner has produced the true copy of the Sale Deeds in respect of both these transactions as Exhibit ‘F’ and ‘F-2’ to the Petition. The Petitioner then asserts that the said Vimal Gokul Patil is none else but wife of Senior Inspector of Police Gokul Patil, who has

been arrested in Crime Register No.135 of 2002 in the case popularly known as ‘Telgi Scam Case’ pertaining to the fake stamp papers. It is stated that on account of the said claim, the Government suffered huge loss to the extent of Rs.35,000 crores and that was one of the main issue during the election of Maharashtra Legislative Assembly held in the month of October 2004. That scam has taken place during the Congress Regime and it is stated that many Ministers of the then Congress Government were involved in the said scam. Besides, police officials were also involved in the said scam. It is the case of the Petitioner that the Respondent had no known source of income and even his wife was unemployed. According to the Petitioner, the circumstances in which the Respondent and his wife invested huge amount in purchasing immovable properties was inexplicable. Obviously, the money must have been financed by said Gokul Patil, who was one of the accused in the Telgi Scam Case, from the money generated from Telgi Scam. The Petitioner states that the Respondent intentionally suppressed the fact of purchase of such immovable property in the name of

his wife in the affidavit filed along with the nomination form. It is stated that the affidavit was therefore, defective and for which reason, the nomination form was liable to be rejected. The Petitioner has then stated that if those facts were disclosed by the Respondent, the voters of the Constituency who are educated lot, would have definitely become aware about the links of the Respondent with the persons who are accused in Telgi Scam Case and would have rejected his candidature. It is stated by the Plaintiff that due to suppression of these facts, the election of the Respondent has been materially affected and but for this suppression, the Respondent would have definitely lost the election.

76. The Respondent in Para 23 of his written statement has dealt with these allegations. After generally denying all the allegations in Para 12 of the Petition, the Respondent though accepted that Gokul Patil is a Police Official and Vimal Patil is his wife, but stated that said Gokul Patil was posted within the constituency for a short period. During his posting in the Constituency, the

Respondent came in acquaintance with him. The Respondent then states that he is surprised to note about the Sale Deed Exhibit ‘F’ produced by the Petitioner. According to the Respondent, the said document is a got-up document. The Respondent states that no consent whatsoever was obtained by the seller Jagannath Trimbak Kulkarni from his wife to execute the sale deed in her favour. The Respondent has denied that his wife is purchaser in the said transaction. The Respondent has further stated that in none of the documents relied by the Petitioner, there is signature of his wife. The Respondent has stated that he never came in possession of the said property. The Respondent then states that since he had disclosed other properties, there was no reason for him to suppress the property at Bhilkhede, if it were to be owned by his wife. It is then stated that as the said property does not belong to his wife, the question of non-disclosure of the said property in the affidavit accompanying the nomination form did not arise. The Respondent has then stated that in the representation made by the Petitioner dated 6th October 2004 and 8th October 2004, no mention has

been made about this transaction. According to the Respondent, the Petitioner has made wild allegation inspite of knowledge about the sufficient source of income of the Respondent from his family properties. The Respondent has denied his association with Gokul Patil as alleged by the Petitioner. The Respondent has also denied that the Telgi issue was the main issue during election in his Constituency.

77. The Petitioner to establish the allegation under consideration, in his affidavit in lieu of examination-in-chief in Para 11, has restated the case made out in Para 12 of the Petition which is referred to earlier. The Petitioner has been cross-examined by the Respondent on the said matter. The Petitioner has conceded that he did not go to Village Bhilkhede but claims to have met Jagannath Trimbak Kulkarni residing in that Village before filing of the Election Petition. The Petitioner has also conceded that he did not know Jagannath Trimbak Kulkarni before hand. Similarly, he did not know any other person in the said village except Jagannath Kulkarni. The Petitioner

has then stated that he met Talathi of Village Bhilkhede for obtaining relevant documents. Questions have been asked to doubt the credibility of this witness about his personal knowledge in relation to the transaction.

78. Besides, the Petitioner has relied upon the evidence of Aniruddha Raghavrao Patil (PW 3), the Revenue Circle Officer of Phur, Jalgaon, within whose jurisdiction Village Bhilkhede was located. This witness has stated that unless the purchaser is an agriculturist, will not be entitled to purchase agricultural land. He has stated that after necessary formalities, the Sale Deed was executed. During cross-examination, this witness, however, has admitted that he is educated only up to 11th Standard and that, it was his first appointment as Circle Officer. Before his promotion as Circle Officer, he was Talathi. He has then accepted that even a third party can file application along with Index II Extract for effecting entry of transaction. He has also conceded that on going through the entries, he was not in a position to state as to who had filed the

application to Talathi to effect the entry of this transaction i.e. Mutation Entry No.519. He has also admitted that a person who is not an Agriculturist, may also purchase agricultural land on seeking necessary permission. The witness was re-examined by the Petitioner on certain matters to clarify the statement made in the cross-examination.

79. Petitioner has also relied on the evidence of one of the owner of the land, out of the two lands, Jahangir Gulam Ahmed Patel (PW 5). He has deposed that Kamal Kisan Kathore and Vimal Gokul Patil were not known to him nor he has ever seen those ladies. He has, however, stated that he sold his agricultural land to these two ladies which is situated at Nachankhede. He has stated that his Uncle Kalu Gafoor Patel, resident of Nachankhede, knows the price for which the land was sold. He asserts that the transaction in respect of his land was settled by his Uncle. He has stated that the Sale Deed is also registered. He has further stated that his Uncle Kalu Chacha and Jagannath Trimbak Kulkarni had been to Jamner for

registration of documents along with him. He has stated that Kalu Chacha and Jagannath Trimbak Kulkarni have also put their signatures before the Sub-Registrar in his presence. The document has been exhibited as Exhibit ‘1-F’. In short, this witness has proved sale of his land in favour of Kamal Kisan Kathore and Vimal Gokul Patil. The witness has been cross-examined and only suggestion is given to him that he signed the said documents on the say of Kalu Chacha or Jagannath Trimbak Kulkarni. He has admitted that he had no knowledge of the terms and conditions of the transaction.

80. The Petitioner has also examined Shamrao Barku Kapse (PW 6) in support of this allegation. The said Shamrao was working at Hivarkhede Budruk, Taluka Jamner, District Jalgaon as Talathi. He has stated that mutation entry No.519 dated 1st August 2000 was made after purchase of land by Kamal Kisan Kathore and Vimal Gokul Patil. They had given extract of Index II Register to him in relation to the transaction which is produced by him. He has recognised the signature on the document put on 1st August 2000. He has spoken about the name of the

vendor as Jagannath Trimbak Kulkarni and the purchasers as Kamal Kisan Kathore and Vimal Gokul Patil. The date of the transaction is stated to be 11th April 2000. In short, this witness has proved entries in the revenue record which were effected on the basis of sale of land. He has also spoken about the transaction in respect of agricultural land of Jahangir Patel. This witness has been cross-examined extensively by the Respondent. The cross-examination is directed to bring on record that none of the ladies had personally visited the Office or were seen or known to anyone or that the purchasers were not in actual possession of the suit land. Indeed, this witness has asserted that one lady had come to him representing herself as Kamal Kisan Kathore. He has denied that the documents have been prepared in collusion with Jagannath Trimbak Kulkarni to play fraud against Kamal Kisan Kathore.

81. The Petitioner has also examined Kalumiya Abdul Gafoor Patel (PW 13) in support of the allegation under consideration. He has explained as to how the transaction was concluded and how the

documents were executed. This witness claims to have seen the wife of Gokul Patil who had visited the village where he was serving before the transaction. He has also stated that the wife of Gokul Patil had visited Yuvaraj Patil, which incident relates back to 1968-70. He concedes that Gokul Patil is not known to him but concedes that Yuvaraj Patil had disclosed to him that Gokul Patil is his relative. He has admitted that name of person who has purchased the land on behalf of other or his signature was not obtained. He has also admitted that even the presence of purchaser was not necessary. Suggestion is given to this witness that documents have been created by him and Jagannath Kulkarni by joining hands, to be used against the Respondent.

82. On analysing the evidence, which has come on record, at the first blush, it appears that there is a registered Sale Deed in favour of Kamal Kisan Kathore and Vimal Gokul Patil in relation to two lands referred to in Para 12 of the Petition. The said documents have been brought on record. Going by the documents and the ocular evidence, it

does appear that the Petitioner has brought sufficient material on record to indicate that Kamal Kisan Kathore and Vimal Gokul Patil had jointly purchased lands at Bhilkhede and Nachankhede. However, the Respondent has stoutly denied any such transaction entered by his wife. From the evidence produced by the Petitioner, it is not possible to authoritatively state that any witness claims to have seen the two ladies viz- Kamal Kisan Kathore and Vimal Gokul Patil before completing the transaction or thereafter. Indeed, the Petitioner may be right in contending that the transactions relate to year 2000. It is inconceivable that documents for such transaction completed in the year 2000 will be created in anticipation of being used against the Respondent in future, whenever he would contest the Assembly Election. At the same time, the question is: whether the case of Petitioner that the transaction is in fact in favour of Respondent’s wife Kamal Kisan Kathore and said Vimal Gokul Patil and within the knowledge of the Respondent or his wife? Neither the Petitioner nor the Respondent has examined Vimal Gokul Patil. However, insofar as

the Respondent is concerned, he has emphatically denied any such transaction entered into by his wife. Besides, the Respondent has caused to file affidavit of his wife Kamal Kisan Kathore while applying for permission of this Court to refer the documents to handwriting expert to elicit expert's opinion with regard to the signature appearing on the documents purported to be that of Kamal Kisan Kathore. It is also a fact that handwriting expert's opinion has been received which supports the case of the Respondent that there are dissimilarities in the admitted signature and the signature purportedly of Kamal Kisan Kathore appearing on the said documents. The Petitioner, however, did not insist for issuing witness summons to the handwriting expert to challenge that report; nor the Petitioner applied for issuing witness summons to the Respondent's wife to cross-examine her in relation to the matter stated by her on affidavit filed before this Court. To that extent, the Respondent is right in contending that in such a case, it will not be safe to conclude that the two documents referred to in respect of sale of agricultural lands at Bhilkhede and Nachankhede are

in fact in favour of Respondent's wife Kamal Kisan Kathore as such.

83. Counsel for the Petitioner, however, would rely on the decisions reported in **2003 (4) Mh.L.J.943-Bapurao s/o Kisanrao Jamgade & Ors. vs. State of Maharashtra, AIR 1977 SC 1091-Magan Bihari Lal vs. The State of Punjab, AIR 1963 SC 1728-Ishwari Prasad Misra vs. Mohammad Isa, and AIR 1964 SC 529-Shashi Kumar Banerjee & Ors. vs. Subodh Kumar Banerjee** to contend that the handwriting expert's opinion is a weak evidence. That can be used only to corroborate the substantive evidence. Besides, the opinion forwarded by the handwriting expert does not indicate the details as to on what basis opinion has been formed about the dissimilarities in the two writings. In that, the nature of dissimilarities are not spelt out at all and such a report therefore will be of no use. However, this argument clearly overlooks the fact that at no stage, the petitioner insisted for issuing witness summons to the handwriting expert to challenge his opinion. In fact, time was taken by the Petitioner

to consider that aspect and on the next date, the Court was informed that the matter can proceed further without examining the handwriting expert. In such a case, the Respondent has rightly pressed into service the exposition of the Apex Court in the case reported in **AIR 1975 SC 905-Phool Kumar vs. Delhi Administration and 1985 Cri.L.J. 1933-Dasu & Ors. vs. State of Maharashtra.** Thus understood, it is too late in the day for the Petitioner to challenge the handwriting expert's opinion which is already taken on record in evidence.

84. That opinion clearly supports the case of the Respondent and corroborates the stand of the Respondent that the writing appearing on the disputed documents was not that of his wife Kamal Kisan Kathore. In any case, the said Kamal Kisan Kathore has filed her personal affidavit before this Court. The contents of the said affidavit have gone unchallenged. No attempt was made by the Petitioner to issue witness summons to the said Kamal Kisan Kathore for the purpose of her cross-examination. Besides, in terms of Section

120 of the Indian Evidence Act, 1872, the Respondent was competent witness to depose matters pertaining to his wife. He has emphatically denied that any such transaction was entered in the name of his wife, to their knowledge. There is, therefore, no reason to doubt the stand taken by the Respondent that his wife Kamal Kisan Kathore had no causal connection with the transaction in relation to the lands at Bhilkhede and Nachankhede referred to in Paragraph 12 of the Petition. As such, there was no question of disclosure of the said immovable properties, as belonging to the wife of the Respondent in the affidavit filed by the Respondent along with the nomination form. Accordingly, the allegation contained in Para 12 of the Petition would fail.

RE : NON-DISCLOSURE OF VEHICLE OWNED BY 'SPOUSE' AND LOAN FROM THANE DISTRICT CENTRAL COOPERATIVE BANK:

85. That takes me to the next allegation in the Petition about non-disclosure of the motor vehicle No.MH-05-AC-555 - Mahendra Scorpio make,

owned by the wife of the Respondent, as mentioned in Para 13 of the Petition. For the sake of convenience, I shall simultaneously deal with the allegation contained in Para 15 of the Petition relating to disclosure of loan taken by the Petitioner from Thane District Central Cooperative Bank in the sum of Rs.5,50,000/- (Rupees Five Lakhs Fifty Thousand) as contained in Para 15 of the Petition, being overlapping.

86. In Para 13 of the Petition, the Petitioner asserts that the above numbered motor vehicle owned by the Respondent's wife has been suppressed by the Respondent in his affidavits filed along with the nomination form. As a result, the said affidavit was defective, as it suppresses that material fact. It is further asserted by the Petitioner that if the Respondent had declared the said information in his affidavit then probably, the Respondent's wife's acquaintance with the accused in Telgi Scam case would have been exposed. It is the Petitioner's case that all properties belonging to and standing in the name of wife of the Respondent Kamal Kisan Kathore have been suppressed in the

affidavits filed along with the nomination form. It is then stated that the affidavits were false, incorrect and defective and no affidavit in the eye of Law. According to the Petitioner, the Respondent has violated the mandatory provision, for which reason, his nomination form has been improperly accepted. The Petitioner has relied on the information furnished to him by the Regional Transport Office after he had made enquiry in that behalf, that the said motor vehicle stands in the name of Respondent's wife - which information is furnished in the letter dated 4th October 2004 used by the Regional Transport Office, Kalyan, which is marked as Exhibit 'G' to the Election Petition.

87. Insofar as allegations in Para 15, the Petitioner states that the Respondent, while filing the nomination paper has declared that he had taken loan of Rs.5,50,000/- from Thane District Central Cooperative Bank, which according to the Petitioner, was false on the face of the record. This is so because the Respondent is the ex-officio Director of the Thane District Central Cooperative Bank being Chairman of the Zilla Parishad, Thane.

As per the legal provisions, the Director of the Bank cannot get loan and/or take loan from the Bank in which he is a Director. The Petitioner has relied on the communication received by him from the Bank Authorities dated 22nd November 2004, which discloses that no loan of Rs.5,50,000/- was given to the Respondent for any reason whatsoever. That is annexed as Exhibit 'H' to the Petition. According to the Petitioner, this was a false information given by the Respondent on affidavit. This allegation is considered along with allegation in Para 13 of the Petition in view of the stand taken by the Respondent.

88. The Respondent, in Paras 24 and 27 of his written statement has replied that the abovesaid assertions made by the Petitioner were false and denied in toto. The Respondent then states that in respect of any vehicle, the documents with Regional Transport Office are public documents and thus the same cannot be suppressed. The Respondent states that the purchase of said motor vehicle was financed by M & M Financial Services Ltd. and the Respondent has disclosed the balance amount of

instalments required to be paid by his wife which commenced from 25th April 2004 till 25th April 2009. The Respondent then states that he has inadvertently mentioned in the nomination form that the loan of Rs.5.50 lakhs was taken from Thane District Central Cooperative Bank, instead of M & M Financial Services Ltd. The Respondent further asserts that the outstanding is not in relation to any Government dues and cannot have any financial impact on the voters. The Respondent then asserts that he has not suppressed any material information.

89. On analysis of the pleadings, it follows that the Respondent admits that motor vehicle in question is owned by his wife. However, it is not his case that in the nomination form, he has disclosed the ownership of the said vehicle of his wife. Perhaps, the Respondent intends to suggest that he has substantially complied with the requirements by disclosing the ownership of motor vehicle valued Rs.5,50,000/- and that it was purchased against loan given by M & M Financial Services Ltd.

90. Before we deal with the ocular evidence of the parties, it will be useful to make reference to the details to be disclosed by the candidate as per the prescribed affidavit. The requirement is that the candidate should disclose the "details of the motor vehicles" owned and possessed by him, his wife and/or other dependent members of his family separately. The Respondent, however, against the said column has only mentioned figure of Rs.5,50,000/- under the column ‘Self’, which gives an impression that the Respondent himself owns vehicle valued Rs.5,50,000/- and nothing more. No details of the motor vehicle such as number of vehicle, the make, the model such as economic, luxury or the year of purchase and the like are disclosed so as to enable the voters to assess whether the details disclosed are correct or undervalued, including the legitimate means and capability of the candidate to possess such assets. As in the case of disclosure made by the Respondent in respect of buildings, in similar manner, the disclosure in respect of vehicle is also incomplete, vague and misleading. The candidate

cannot get away with the explanation that he has disclosed some amount in one of the columns as sufficient or substantial compliance. The purpose of disclosure of assets (movable and immovable) and liabilities to be made by the candidate, is to educate the voters about the complete financial status of the candidate, which information also facilitates the voter to assess whether the assets (movable and immovable) declared by the candidate have been procured by him out of his legitimate and known source of income. The voters have a fundamental right to know and receive such information about the candidate before they take an informed decision to elect their candidate. As it is the fundamental right of the voters, there is corresponding duty on the candidate to disclose truthful and complete information regarding the assets (movable and immovable) as per the prescribed affidavits which forms integral part of the nomination form.

91. Insofar as the issue of motor vehicle is concerned, the Petitioner examined himself as well as PW 2 Babasaheb Ishwar Ajri, who was attached to

the office of Regional Transport Office, Kalyan as Deputy Regional Transport Officer. He has proved the letter issued in favour of the Petitioner dated 4th October 2004 which states that the vehicle was standing in the name of Respondent's wife. Insofar as Petitioner's evidence is concerned, in Para 12 of the affidavit in lieu of examination-in-chief, the Petitioner has more or less reiterated the case made out in the Petition. There is nothing in the cross-examination to challenge the fact stated by the Petitioner that the motor vehicle No.MH-05-AC-555 of Mahendra Scorpio make was owned by the wife of the Respondent and about its non-disclosure. Besides the oral evidence to establish the fact that the said motor vehicle stood in the name of Respondent's wife, that fact is substantiated from the extract given under the signature of Deputy Regional Transport Officer, Kalyan, Maharashtra State in relation to the motor vehicle (Exhibit A-2). That fact is also established from the certificate issued under the signature of Deputy Regional Transport Officer, Kalyan dated 4th October 2004 (Exhibit AAJ (original Exhibit 'G' to the Petition).

92. Indeed, the disclosure made by the Respondent is only mentioning the value of the vehicle as Rs.5,50,000/-. That gives no indication about the make or model of the vehicle. In fact, the disclosure gives an impression that the vehicle is owned by the Respondent himself. As the value of the vehicle is mentioned in column ‘self’, when in fact, now the Respondent admits that the vehicle is owned by his wife. The Respondent has not stated that no vehicle stands in his name. The effect of only mentioning value of the vehicle without the number of vehicle or the make would give a long rope to the candidate to mislead the voters and also to do arithmetical jugglery by disclosing only some of his assets (movable and immovable). The voters are bound to be mislead by such incomplete and vague disclosure. That inevitably entails in a case of misinformation or disinformation. The avowed purpose of filing of mandatory affidavits in prescribed form will be negated and result in only a farce of compliance. In such a case, the inevitable conclusion is that the nomination of the Respondent candidate has

improperly been accepted within the meaning of Section 100(1)(d)(i) of the Act. It would also follow that the candidate has not complied with the order of the Election Commission and attracting provisions of Section 100(1)(d)(iv) of the Act.

93. Insofar as the allegation contained in Para 15 of the Petition in relation to the declaration made by the Respondent that he had taken loan of Rs.5,50,000/- from Thane District Central Cooperative Bank, the Petitioner has deposed about the same in Para 14 of his affidavit in lieu of examination-in-chief, reiterating the case made out in the Election Petition. However, there is absolutely no cross on this aspect. In the written statement filed by the Respondent, the Respondent has not controverted the said fact stated by the Petitioner. However, the Respondent accepts that the name of the Bank mentioned in the nomination form was wrong and was a mistake. Instead, it ought to have been M & M Financial Services Ltd.

94. The Respondent in the affidavit in lieu of

examination-in-chief has virtually reiterated the stand taken by him in the written statement. To establish the fact that the Respondent had not taken loan from Thane District Central Cooperative Bank, the Petitioner has relied on the letter issued by the Bank Authority which supports this position. However, as the Respondent is not disputing that fact, the question is: whether the explanation offered by the Respondent that it was a mistake to mention the name of Thane District Central Cooperative Bank instead of & M Financial Services Ltd., can be accepted. In my opinion, it is not a case of non-disclosure of material information as such, nor it is a case of intentionally giving false information because the Respondent has himself disclosed his liability to the extent of Rs.5,50,000/- which is the amount of loan taken for purchase of the motor vehicle, albeit, in the name of his wife.

RE : NON-DISCLOSURE OF PROPERTY PURCHASED IN THE NAME OF THE FIRM:

95. That takes me to the allegations contained

in Para 14 of the Election Petition. It is the case of the Petitioner that the Respondent has malafide and purposely suppressed the property belonging to him in his affidavit filed along with the nomination form. According to the Petitioner, the Respondent has suppressed that he has right, title and interest in the land admeasuring 1330 square meters being Survey No.48, Hissa No.9, Plot No.2 and also in land admeasuring about 1292 square meters being Survey No.48, Hissa No.9, Plot No.3 at Mouje Kalyan, Taluka Ambernath, District Thane. These properties have been purchased in the name of partnership firm Padmavati Developers under Agreement of Development and Sale, in which the Respondent was one of the partner. The said Padmavati Developers had their registered office at Shraddha Sagar Building, Near Railway Gate, Kulgaon, Badlapur, Taluka Ambernath, District Thane. The Petitioner then asserts that the Respondent was the sitting President of Zilla Parishad, Thane and he has no known source of income. According to the Petitioner, the immovable properties whose market value is in lakhs, have been purchased by the Respondent either in his name

or in the name of his wife and if all these properties were to be clubbed together, the market value thereof would run into crores of rupees. The Petitioner has further stated that if the Respondent were to declare all these properties, then the Respondent was certain that he would be unable to explain his source of income at the time of purchase of the concerned properties in the name of his wife. According to the Petitioner, material information has been suppressed by the Respondent in his affidavit filed along with the nomination form and that the affidavit was defective, for which reason, the nomination form of the Respondent ought to have been rejected or has been improperly accepted for non-compliance of mandatory provisions.

96. Let us turn to the stand of the Respondent, as can be discerned from Para 25 of the written statement. The Respondent has generally denied the allegations against him of having purposely suppressed material facts of property belonging to him in the affidavit filed along with the nomination papers, were false and frivolous.

The Respondent then goes on to assert that the true facts are that the Petitioner had earlier filed petitions dated 6th October 2004 and 8th October 2004 before the Returning Officer containing the same allegation, to which the Respondent has already filed his reply. Respondent then seeks to rely on the said reply dated 30th October 2004 which are marked as Exhibits ‘C’ and ‘C-1’. The Respondent then specifically stated that in the year 2003 itself, he had retired from the partnership and document to that effect has been executed by him on which he would crave leave to refer to and rely upon. This is the only stand taken in the written statement.

97. Even if this Court were to give benefit to the Respondent by invoking the doctrine of incorporation, so as to read the explanation given by the Respondent to the Returning Officer, as part of the written statement, even then, the case made out by the Respondent in relation to this allegation would, at best, be that he has retired from the partnership in 2003. In the letter dated 28th October 2004 sent by the Respondent to the

Returning Officer, he has stated that the two properties referred to above do not belong to him. According to the Respondent, the allegation of the Petitioner was his opinion on half information and a deliberate attempt, intended to keep the Respondent away from the election process. In this letter, Respondent has stated that in 1995, a partnership firm under the name and style of Padmavati Developers was formed consisting of three partners - Sainath Gurunath Shete, Kisan Kathore (Respondent) and Kumudini Yuvaraj Patil. The Agreement in respect of the above mentioned two properties was entered on 11th July 2001 between the partners and Mr.Shreedhar Dattatraya Apte and four others. He further states that the same was reduced into an Agreement. It is further stated that as per the Agreement, all the three partners were to contribute consideration amount equally. It is then stated that contribution came only from Sainath Shete. Neither he nor Mrs.Patil contributed any money. It is then stated that as Sainath Shete was required to bear the entire financial burden, he repeatedly asked for contribution of money. In 2001, Mrs.Patil left the

partnership, as she could not arrange for the funds to contribute. It is then stated that even the Respondent could not contribute funds towards his share and lost interest in the said properties. Eventually, even the Respondent left the partnership in December 2003. It is further stated that on 7th November 2003, on a stamp paper, he had reduced his intention to retire from the partnership in writing and handed over the same to Sainath Shete. Insofar as the Bank account operated in the name of the partnership firm, the Respondent has conceded that it was operated jointly by Sainath Shete and himself. He has stated that on the request of Shete, he agreed to cooperate to put his signatures on the cheques till the transaction was complete. He further stated that he had asked Shete to delete his signatures from the bank accounts, which procedure was yet to be completed. The Respondent has then stated that since 7th November 2003, he has had no concern with the said properties and has not invested a single paise in the transaction. More or less, similar stand is taken in the reply sent to the Returning Officer on 30th November 2004.

98. It is common ground that there is no reference about the two properties in the affidavits filed along with the nomination form. It is also admitted position that partnership in the name of Padmavati Developers was formed in 1995 of which Respondent was one of the partner. It is also not in dispute that Bank Account was operated in the name of the said partnership firm wherein, the Respondent was one of the joint signatory. From the reply given to the Returning Officer as well as the stand taken in the written statement, the Respondent admits that he continued to remain as partner of the said partnership firm till November 2003.

99. The main controversy that needs to be addressed in the context of this allegation, therefore, is: whether the Respondent in fact retired from the partnership firm in November 2003 as claimed by him? If that stand of the Respondent was to be accepted, in that case, non-disclosure of the two properties originally purchased in the name of the partnership firm of which Respondent was a

partner, may not be a substantive defect.

100. The Petitioner in Para 13 of the affidavit in lieu of examination-in-chief has virtually reiterated the allegations contained in Para 14 of the Election Petition. In the cross-examination, only suggestion is given to the Petitioner that Respondent was not partner in the firm at the time of filing of his nomination form and that, the Petitioner was aware of that position. Indeed, the cross-examination is mainly directed to question the credentials of the Petitioner and to suggest that the Petitioner had filed the Election Petition out of vengeance against the Respondent. In the cross-examination, the Petitioner has stood by his case made in the Election Petition that he had collected information from the Registrar of Firms, Mumbai from which it is disclosed that the partnership firm was in existence at least till December 2004 and the Respondent was one of the partner therein. The Petitioner has produced the certified copy of the certificate issued by the Registrar of Firms in that behalf. Questions have been put to the Petitioner during cross, suggestive

of the fact that the documents produced by the Petitioner did not come from proper source, namely, Sainath Shete and Kumudini Patil, who were to be examined as the Petitioner's witnesses. The Petitioner has been also confronted that no documentary evidence has been produced to show the market value of the properties. From the tenor of cross-examination also, it is seen that the Respondent concedes the position that the two plots were purchased in the name of partnership firm from said Shreedhar @ Nana Dattatraya Apte. According to the Respondent, however, he retired from the partnership firm in November 2003; and after his retirement, the transaction was completed with said Apte in respect of the said plots in favour of Sainath Shete, which became the property of Padmavati Developers.

101. The fact that the Respondent retired from the partnership firm in November 2003, as asserted by him, is in contrast to the documentary evidence in the form of certificate issued by the Registrar of Firms of retirement in December 2004. If so, the fact that Respondent in fact retired from the

partnership firm much prior to filing of the nomination form, that fact is within the personal knowledge of the Respondent. The onus to establish that fact will, therefore, be on the Respondent. The Respondent will have to establish that he in fact retired in November 2003, and since then had no causal connection with the partnership firm and at any rate on the date of filing of the nomination on 20th September 2004.

102. Before I turn to the evidence of the Respondent, it is relevant to point out that the Petitioner had got witness summons issued to Kumudini Patil, to be examined as PW 7. She, however, did not appear to give evidence. Instead, an application was submitted to excuse her presence due to sickness. That request was accepted, but later on, no witness summons was sent to her. In other words, she has not been examined. Non-examination of PW 7 does not affect that case established by the Petitioner. Indeed, Kumudini Patil being one of the partner, could have deposed about the same, if were to be examined. However, as mentioned earlier, the onus would be on the

Respondent to establish the fact he has asserted.

103. Be that as it may, the Petitioner also examined the original owner of the abovesaid two plots Shreedhar Dattatraya Apte as PW 8. This witness has deposed about the transaction of the two plots admeasuring about 1 acre 17 gunthas which were adjacent to Badlapur Railway Station. He has deposed that the land was still agricultural and under his cultivation. He has stated that in the year 2001, he has entered into an Agreement for Sale with Sainath Shete. Initially, he said that the copy of the Agreement was not with him. However, he then said that the document has been destroyed on the advise of income tax consultant. He has admitted that he had received earnest amount in respect of the transaction by cheque. He produced his Bank statement of Dombivli Nagari Sahakari Bank Ltd., Branch at Kulgaon and Income-tax Returns for the assessment years 2002-2003 to 2005-2006. These documents do indicate that consideration amount relating to the transaction was received by him from time to time by cheque. Although he has said that the

transaction was between him and Sainath Shete, he states that Sainath Shete had told him that as the area of plot was quite big, he would be taking two persons along with him as partners in the transaction. The names of the partners were disclosed as Kathore and Mrs.Patil. He has then stated that the Agreement of transaction was got executed with Sainath Shete and himself in the name of one firm to which reference is made in the document. He has stated that the said Agreement was not registered. He has spoken about the cheques received by him in respect of the said transaction from time to time, which position was supported by thirteen entries in the passbooks from 3rd August 2001 till 9th September 2004 to the tune of Rs.21,80,000/- (Rupees Twenty-one Lakhs Eighty Thousand). He has stated that Sainath Shete had expressed inability to complete the transaction in 2005 on account of some reservation and encroachment as also the property was not converted into non-agricultural. He has stated that Shete had informed him that it was not possible to pay the consideration amount fixed in respect of the said properties in 2001 on account of the

subsequent developments. He has deposed that he was told by Shete that his partners were also not ready to finalise the transaction and for which reason, he alone was ready to complete the transaction but for reduced price. Accordingly, Agreement was executed between him and Sainath Shete on 11th March 2005. The certified copy of the said document is produced on record. The contents of the said document have been admitted and proved by this witness. He has deposed that whatever amount was paid to him under the earlier Agreement dated 30th July 2001 was adjusted in the Agreement of 11th March 2005. He has also spoken about having executed Power of Attorney in favour of Sainath Shete. He has stated that he has received the entire consideration amount as per Agreement dated 11th March 2005. The cross-examination of this witness by the Respondent is very brief. The first question is with reference to Agreement dated 11th July 2001, wherein, details of payment have been mentioned. This clearly indicates that the copy of the Agreement dated 11th July 2001 which has come on record (Exhibit ‘E-1’ and Exhibit ‘E-2’) have been

admitted by the Respondent. PW 8 Apte was asked that the last payment under the said Agreement was to be made on or before 15th December 2003 and that payment was not made as per those terms. This witness was asked as to how did he react because of that, to which, he responded that he pressed Sainath Shete to make the payment as early as possible. He then deposed that Sainath Shete told him that as there are encroachments, the price be reduced to some extent. He has also deposed that Sainath Shete had told him that partner was not cooperating with him. He has then deposed that accordingly, after discussion between him and Sainath Shete, the price of the land was reduced in respect of both the Agreements and thereafter, on getting the amounts, he executed the Development Agreement, which was registered dated 11th March 2005.

104. There is absolutely nothing in the cross-examination of this witness that he had knowledge or was informed of the fact that the Respondent has retired from the partnership firm in November 2003. In the examination-in-chief, the

witness has clearly stated that the Agreement of 2001 was in favour of the firm and Sainath Shete told him that there were two partners in the firm, namely, Kathore and Mrs.Patil. The Petitioner by examining this witness, has successfully established that there was transaction in the name of partnership firm Padmavati Developers in the year 2001. Further, pursuant to the said transaction, the owner (PW 8) was paid earnest money and consideration amount from time to time since 3rd August 2001 till 9th September 2004. Notably, we are not concerned with the case of specific performance of the Agreement or to consider the question whether time was essence of the Agreement, which was the nature of cross-examination. The fact that the transaction of 2001 was in the name of partnership firm, of which, the Respondent was one of the partner and that payment was received by PW 8 from time to time from the account of the partnership firm all throughout, has remained unchallenged. Rather, those facts are conceded. The crucial question was: whether the Respondent was partner of the said partnership firm on the date of filing of the

nomination form on 20th September 2004? There is absolutely no cross- examination of this witness in that behalf.

105. The next witness examined on behalf of the Petitioner is one of the partner of the said partnership firm Padmavati Developers. According to the Petitioner, as this partner was examined, non-examination of Kumudini Patil, the other partner, would make no difference. Insofar as the evidence of PW 9 Sainath Shete is concerned, significantly, this is a peculiar case where the Petitioner had to rely on the evidence of witnesses who are interested witnesses and out to support the Respondent. Sainath Shete is one such witness, who was admittedly partner in Padmavati Developers where the Respondent was also a partner. Naturally, the witness was not coming out with all the relevant details to enable the Petitioner to discharge the initial burden to establish the fact that the Respondent was partner in the partnership firm till the date of filing of his nomination so as to make good his allegation that non-disclosure of the properties in the nomination form was a

substantive defect. The Petitioner, therefore, was required to move this Court to declare PW 9 as hostile witness and to seek permission to cross-examine him though summoned as the Petitioner's witness. I acceded to that request of the Petitioner for the reasons mentioned in my order passed for that purpose. Thereafter, Sainath Shete (PW 9) was cross-examined by the Petitioner in which the material facts have come on record.

106. The said PW 9 initially stated that there was no Partnership Deed, but when confronted with the document Exhibit 'IH' issued by the Registrar of Firms, had to concede that he would search his record to ascertain whether copy of the Partnership Deed was with him or not. This witness also declined to produce relevant documents such as the Agreement of 2001 in respect of the above referred properties purchased in the name of the partnership firm. Insofar as Partnership Deed is concerned, on the subsequent date, when he appeared, he informed that he was ready to produce the same, but on that date, it was not with him. He assured that he would collect copy of the Partnership Deed from the

Office of the Registrar of Firms and produce the same. Insofar as the Agreement of 2005 is concerned, he stated that the same has already been produced by PW 8 Apte. Insofar as Income-tax Returns of Padmavati Developers are concerned, it was his case that the said firm never came into existence and no Returns were filed in the name of the said firm, for which reason, no Income-tax Returns of the firm could be produced. He, however, produced the Deed of Dissolution titled as Deed of Retirement dated 5th January 2005, whereunder, the Respondent and Mrs.Patil are shown to have retired from the partnership firm. PW 9 Shete has also produced xerox copy of the document dated 6th November 2003 styled in vernacular as *"Na Harkat Dakhla"*. The said document has been later on produced by the Respondent during his evidence and marked as Exhibit ‘R-5’.

107. Significantly, the original copy of letter dated 6th November 2003 given under the signature of Respondent indicating that he has retired from the partnership firm is not forthcoming. It is well established position that the original

document alone is admissible. No case has been made out either by PW 9 or by the Respondent that the original copy of the said document dated 6th November 2003 has been misplaced or not traceable. There is no prayer for treating the said document as secondary evidence. In the circumstances, this document though produced by PW 9 will be of no avail.

108. PW 9 Shete has then produced bank account extract of Padmavati Developers since 2000. This witness was confronted during the cross-examination by the Petitioner with the application filed by the partners for registration of the partnership firm. The name of Respondent had been shown at Serial No.2. Certified copy of the Marathi and English Copy of the Partnership Deed were seen by this witness, who in turn, admitted the signatures of the three partners appearing on the said documents. The signature of Respondent at Serial No.2 has been identified by him. PW 9 Shete was confronted with Paragraphs 6 and 7 of the Partnership Deed in Marathi which provides for the proportion of capital to be contributed by the respective

partners and the share of profit. However, this witness asserted that the partnership never came into existence. That fact, however, is belied by the evidence of PW 8 Apte who has deposed that Agreement was executed in the name of partnership firm as also of the fact that payment was received by him from the account of the partnership firm. The payment received by PW 8 Apte are traced to the bank statement of the partnership firm. It is, therefore, inconceivable that the partnership firm never came into existence as is asserted by this witness.

109. PW 9 Shete was also confronted with the Deed of Dissolution dated 11th January 2005. He admitted the contents thereof as well as the signatures of three partners appearing on that document. This witness has admitted that no public notice about the retirement or change in the constitution of the firm was ever published in the newspaper. This witness admits that intimation was given to the Registrar of Firms only by document dated 11th January 2005.

110. As mentioned earlier, PW 9 Shete has produced the bank account statement of Padmavati Developers which was being operated from 2000. The initial entry in the bank statement is of Rs.85,000/- (Rupees Eighty-five Thousand) in cash. The source from where the said amount has been brought and deposited in the name of the firm is not disclosed either by this witness or by Respondent himself. As per clause (7) of the Partnership Deed, the capital of the firm is stated to Rs.1,00,000/- (Rupees One Lakh) to be contributed by three partners. PW 9 Shete was to contribute additional Rs.1,000/- (Rupees One Thousand) than the other two partners as per clause (6) of the Partnership Deed. Proportionately, PW 9 Shete was to get 34% share in the profits and loss of the firm, whereas, the other two partners would get 33% each. Indeed, PW 9 has stated that the account number remains the same and has now been changed in his individual name, but that has been done only recently before two months prior to document dated 21st April 2005. That means, as late, till February 2005, the account was being operated as a partnership firm account, which fact

is conceded by this witness.

111. Significantly, PW 9 Shete claimed that the Agreement entered into with PW 8 Apte in 2001 was not in his possession. According to him, the same was washed out during heavy rains in July 2005. As both witnesses PW 8 and PW 9 failed to produce the original document, the Petitioner moved application for taking on record xerox copies of the original Agreement documents, which were notarised documents. Be that as it may, the contents of the said Agreement have been admitted by PW 8 as well as PW 9 and are not disputed by the Respondent.

112. Significantly, PW 9 Shete asserted that no Income-tax Returns of partnership firm Padmavati Developers were filed. At the same time, however, declined to produce his personal accounts for the relevant period from 2000 to juxtapose the credit entries appearing in the account of Padmavati Developers which he claims to have been entirely contributed by him. PW 9 Shete plainly refused to produce his personal accounts or his personal Income-tax Returns. All that he produced was his

individual Income-Tax Returns for the assessment year 2005-2006 and 2006-2007 which was not relevant to explain the circumstances in which the amount was credited to the Account of Padmavati Developers which was a partnership firm. The Petitioner rightly argued that adverse inference ought to be drawn. The fact remains that there is no satisfactory explanation forthcoming regarding the contributions made to the account of Padmavati Developers.

113. It may be recalled that this witness initially emphatically asserted as is the case of the Respondent that Padmavati Developers never came into existence. From the evidence on record, it is not possible to countenance that stand. From the statement of Bank Account of Padmavati Developers, it is clear that several transactions for and on behalf of the firm have been effected. Payments have been received by PW 8 Apte towards consideration in respect of the two Agreements executed in favour of the firm in relation to the two plots. The explanation offered by this witness that no returns have been filed on behalf of

Padmavati Developers, partnership firm, is neither here nor there. Assuming that no returns in the Padmavati Developers were filed, nothing prevented PW 9 as well as the Respondent to offer proper explanation about the source from where contribution was made from time to time to the account of Padmavati Developers, partnership firm. PW 9 did explain that the payments made to Apte (PW 8) came from his other two firms Sainath Construction and Saidarshan Firms, which were partnership firm and not proprietary concern. But that does not take the matter further for the Respondent.

114. Be that as it may, the fact remains that PW 9 Shete as well as Respondent conceded that the Bank Account of Padmavati Developers, a partnership firm was jointly operated by PW 9 Shete and the Respondent till February 2005. That is even after the nomination form was filed by the Respondent.

115. This witness has been cross-examined by the Respondent. But nothing material has come on record which would further the case of the

Respondent regarding the fact that the Respondent was not a partner in the Padmavati Developers, partnership firm on the date on which he filed his nomination form dated 20th September 2004. PW 9 Shete has admitted that except his words, he has no contemporaneous documents to prove that Respondent Kathore avoided to make payment to him though demanded repeatedly. Suggestion was given to PW 9 that there is no reflection of the payment made by him to Padmavati Developers in his individual income-tax return, which ofcourse has been denied by him. Indeed, in the cross-examination by Respondent, PW 9 Shete has stated that though Respondent was partner of the firm he never contributed any amount towards the capital of the firm in the form of monetary consideration.

116. Significantly, in the cross at the instance of Respondent, it has come on record that the third partner Kumudini Patil contributed Rs.1,50,000/- (Rupees One Lakh Fifty Thousand) towards her capital in the partnership firm. What is relevant to note is that the cross-examination of PW 9 Shete at the instance of Respondent

proceeds on the premiss that the Respondent continued as partner till 2003. In that, the Respondent asked to dissolve the partnership in 2003, but till completion of documentation formalities, he would cooperate PW 9 by giving his signatures. There is one material improvement made by PW 9 during the cross-examination by the Respondent, that the cheques of Padmavati Developers were signed in advance by the Respondent in 2003 as he had no interest in the partnership. No such case is made out by the Respondent either in the written statement or the explanation offered to the Returning Officer.

117. PW 9 has conceded that besides his word, he has no contemporaneous record to show that he had made demand to the Respondent to pay the amount from time to time, which was not complied by the Respondent. Indeed, in the cross-examination at the instance of Respondent, PW 9 Shete has stated that eventually, he renegotiated with Apte (PW 8) and completed the transaction in his individual capacity.

118. From the oral as well as documentary evidence produced by the Petitioner, the Petitioner has clearly discharged his burden to establish the fact that the Respondent was partner in Padmavati Developers and remained partner till December 2004 as noted in the records of the Registrar of Firms. In other words, the Respondent was partner in Padmavati Developers on 20th September 2004 on which date, nomination form was filed, for which reason, it was imperative for the Respondent to disclose his interest in the two properties purchased in the name of the firm in the affidavits filed along with the nomination form.

119. As mentioned earlier, the moot question is: whether the Respondent has established the fact that he in fact retired from the affairs of the partnership firm in November 2003 as asserted by him? The Respondent relies on his evidence to support that position. The case made out by the Respondent in his affidavit in lieu of examination-in-chief in Paragraphs 29 and 30 is virtually reiteration of the vague plea taken in the written statement. What is positively

mentioned is that, he retired from the partnership firm of Padmavati Developers in the year 2003 and executed document in that behalf. Respondent, during the cross-examination, at one place, stated that he retired from the firm in 2003. But when confronted with the extract from the Registrar of Firms dated 30th April 2005 - entry 2 marked C to C, he had to accept that the date of his retirement from partnership firm mentioned in the document was with effect from 28th December 2004. He is not in a position to explain this anomaly. He has denied the suggestion that prior to 20th December 2004, no intimation was given to the Registrar of Firms about his retirement from the firm. However, he has not produced any material to support the stand to the contrary. Significantly, the Respondent then volunteered to state before the Court that there were some differences with the partners in 2001 itself and for which he had informed the other partners of the firm about his unwillingness to continue as partner. This is a clear improvisation of material fact. No such case has been pleaded in the written statement or for that matter, in the explanation offered to the Returning Officer.

Obviously, it is an afterthought version given by the Respondent, presumably, having realised that the allegation would stick against him as the Agreements in respect of the two properties were executed in the year 2001 in the name of the partnership firm where he was one of the partner. Nowhere, PW 9, who was the other partner of the firm, has even remotely suggested this position nor such case has been put to PW 9 Shete during the cross-examination at the instance of the Respondent. However, in his voluntary statement, the Respondent has admitted that no intimation was given to the Registrar of Firms in regard to such intention to retire expressed in year 2001. The Respondent was then confronted with the Deed of Retirement which is dated 5th January 2005. This Deed of Retirement was submitted to the Registrar of Firms only in January 2005, which fact is admitted by the Respondent. The Respondent has also admitted in the cross-examination that he had never given any public advertisement mentioning that he had no connection with the partnership firm in the past. It was suggested to Respondent that he continued to sign the cheques issued in the name

of partnership firm even after he had submitted Retirement Deed. The Respondent stated that he was not in a position to give the exact date till which he continued to sign the cheques of the partnership firm till February 2005. In fact, the evidence of PW 9 Shete clearly suggests that the partnership firm's bank account was operated under joint signature of the Respondent as late as till February, 2005. Indeed, PW 9 Shete has improved his case by stating that cheques were signed by Respondent in 2003 in advance. However, that is not the case stated by the Respondent himself.

120. The Respondent admits that he did not disclose his interest in the partnership firm in the affidavit filed along with nomination form. What is significant to note is that, in Para 13 of the cross-examination, the Respondent went on to claim that he was not aware whether Padmavati Developers had purchased immovable property at Badlapur from Shreedhar Apte and family. He states that he is not aware of the existence of the two Agreements shown to him dated 11th July 2001 entered into between Shreedhar Apte and his family.

This claim of the Respondent is obviously false to his knowledge. That is not the case made out in the written statement or the explanation offered by the Respondent before the Returning Officer. Moreover, if the Respondent was not aware of the transaction, there was no reason for him to sign the cheques issued in favour of Shreedhar Apte, as one of the partner and joint signatory on cheques issued from the account of Padmavati Developers, which happened till as recent as September 2004. It has come in evidence that the payment was made to Apte in instalments from time to time commencing from 3rd August 2001 till 9th September 2004. Thus understood, the claim of the Respondent that he had no concern with the transaction between Padmavati Developers and Shreedhar Apte in any manner, is an utter falsehood.

121. In the cross-examination, Respondent admits that he was aware that every partner is equally responsible for the liabilities of the firm. He was also aware that until the record before the Registrar of Firms is amended, the liability of the partner continues to operate.

Notwithstanding this, he admits that he did not disclose the transaction entered by Padmavati Developers in his affidavit. The stand taken on behalf of the Respondent that he had no concern with the transaction in relation to two properties of Shreedhar Apte is an afterthought, taking benefit of the fact that the said document was signed only by two partners PW 9 Shete and PW 8 Kumudini Patil for and on behalf of the partnership firm in the year 2001. The Respondent, however, asserts that he did not bother to enquire whether the partnership firm was filing Income-tax Returns, as he had retired from the firm. In the next breathe, he goes on to say that as no transaction was entered by the partnership firm, the question of filing returns till he was partner did not arise. He has admitted the contents of Clauses (6) and (7) of the Partnership Deed, but asserts that he did not contribute any funds to the partnership firm till he resigned in 2001. The Respondent was obviously confusing the date of his retirement as 2001, which was with purpose, to get over the Agreement executed in respect of the two properties by the partnership firm with Shreedhar Apte (PW 8).

It was suggested to the Respondent that he purposely did not disclose the properties of the partnership firms in his affidavit.

122. In Para 18 of the cross-examination, the Respondent admits that no Public Gazette Notice or advertisement was issued in respect of his retirement from the partnership firm. The Respondent, however, relies on the No Objection Certificate dated 6th November 2003 to assert that he retired from the affairs of the partnership firm. However, even the Respondent has produced only xerox copy of the said document. The Respondent then asserts that this communication was handed over to Shete (PW 9) and he was advised to take necessary procedural steps. He has then stated that since he was not actively engaged in the business activities of the firm, the requirement of completing the formality of retirement was left to Shete (PW 9). The Respondent states that he trusted that his partner will take necessary steps to comply with the mandatory requirement. He admits that there was bank account in the name of Padmavati Developers

and that he was one of the joint signatories to operate the account of the partnership firm along with Sainath Shete. He also admitted that the cheques issued in favour of Apte & Family in relation to the transaction were signed by him. At this stage, the Respondent volunteered that when the bank account of Padmavati Developers was opened, he had signed some cheques in anticipation of possible transactions and payments to be made on behalf of the firm. This is a clear improvement. No such case is made out in the written statement or the explanation given to the Returning Officer. In fact, this version is not consistent with the version of the Shete (PW 9). According to Shete, the bank account, from which, the cheques were jointly signed by him and Respondent in the name of partnership firm Padmavati Developers, was operated till February 2005. Significantly, the Respondent has only generally denied of having contributed any amount to the Partnership firm. Whereas, the first entry in the bank passbook in the form of Rs.85,000/- (Rupees Eighty-five Thousand) in cash at the time of opening of that account is not explained either by the Respondent or his partner

PW 9. PW 9 then went on to say that when Respondent tendered retirement letter dated 6th November 2003, he had signed some cheques in respect of the said partnership firm to complete the transaction, whereas, now the Respondent claims that he had signed cheques in anticipation of possible transaction at the time of opening of account in 2000 itself. The Respondent has not disclosed any details as to how many such cheques were signed by him. Inasmuch as Shreedhar Apte has been paid from the account of partnership firm from time to time by several cheques (about thirteen). Suffice it to observe that this version of the Respondent is only to get over the allegation that he continued to remain as partner of the said partnership firm till the date of filing of the nomination. There is material improvement in the evidence given by the Respondent.

123. Besides, having noticed the demeanour of the Respondent during recording of his evidence and the evasive replies which were given by him, I have no hesitation in taking the view that his version and defence is not truthful and honest. The

Respondent has failed to establish the case made out by him that he retired from the partnership firm in November 2003 or for that matter, 2001 before the transaction with Shreedhar Apte was effected in the name of partnership firm. Whereas, the Petitioner has established that in the record of the Registrar of Firms, the Respondent remained as partner of the partnership firm atleast till December 2004. Besides, it has come on record that the Respondent was joint signatory to the cheques issued in the name of the partnership firm and the account of the firm which was operated as recently till February 2005. The explanation offered by the Respondent is untenable. Neither the Respondent nor PW 9 has produced accounts of the partnership firm or the income-tax returns for the relevant period from 2000 when the bank account was opened. PW 9 Shete selectively produced individual income-tax returns only for assessment period from 2005-2006 and 2006-2007 which were not for the relevant period. It is obvious that to cover up the allegation made in the Election Petition, the Respondent must have created document dated 6th November 2003, however, the original thereof is not

forthcoming. No explanation is offered for non-production of original copy of the letter dated 6th November 2003. That document will be of no avail to the Respondent also because it has come on record that the Respondent was signatory to the cheques issued from the account of the partnership firm and the continuation of partnership firm till November 2005. Those facts are established from the evidence of PW 8 and PW 9 as well as the Respondent himself. The case of the Respondent that advance cheques were signed by the Respondent is obviously afterthought. The Respondent with a view to completely absolve himself from the allegation, went to the extent of asserting that he had no knowledge of the transaction with Shreedhar Apte in relation to the properties entered by the partnership firm.

124. On overall analysis of the evidence, I have no hesitation in concluding that the Petitioner has established the allegation that the Respondent continued to be partner of the partnership firm Padmavati Developers at least till December 2004. It is also matter of record and

admitted position that neither the Respondent nor any other partner of Padmavati Developers caused to give public notice of the retirement of the partner or for that matter, intimation to the Registrar of Firms till January 2005. Obviously, intimation has been sent to the Registrar of Firms only after the institution and service of the present Election Petition, having realised the seriousness of the allegation. If so, it was obligatory on the part of the Respondent to disclose his interest in the properties purchased in the name of the said firm.

125. To get over this position, Counsel for the Respondent, however, has placed reliance on the decision of the Gujrat High Court in the case of **Jani Nautamlal Venishankar, Wadhwan vs. Shri Vivekanand Co-operative Housing Society Ltd. & Ors. reported in AIR 1986 Guj. 162** to contend that non-publication of public notice prior to September 2004, the date of filing of nomination, about the retirement, will make no difference. The exposition in this Judgment has no application to the facts on hand. In that case, the Court went on to record a finding that the retirement of the

partner was within the knowledge of the Bank which was duly intimated by the outgoing partner. In such a case, the argument of non-publication of public notice was not available to the third party Bank. In the present case, however, the purported retirement of the Respondent is in November 2003. There is not even a whisper in the evidence of PW 8 Shreedhar Apte or for that matter, PW 9 Shete or the Respondent himself that soon thereafter, intimation was given to said Shreedhar Apte about retirement of the Respondent. Not even a suggestion was put to PW 8 Apte that he was informed about the retirement of the Respondent in November 2003 itself or any time thereafter prior to September 2004. Whereas, the transaction is completed in favour of Sainath Shete (PW 9) in March 2005 i.e. on 11th March 2005. To put it differently, till fresh negotiation took place between Shete and Apte in 2005, the said Apte was given to believe that the transaction was in favour of the partnership firm Padmavati Developers, of which the Respondent was one of the partner. In any case, we are not concerned with the specific issue of the transaction as such but the general

issue as to whether, in law, the Respondent retired from the partnership firm pursuant to intimation dated 6th November 2003 sent to Shete (PW 9). The Petitioner has rightly relied on the decisions reported in **2005 (4) All.M.R. 769 - M/s.G.M.Breweries Ltd. vs. M/s.Shreenath Developers & Anr. & Mrs.Jyotsna Nitin Mehta,** and **2004 All.M.R. (Cri.) Journal 10 - Anil Kumar Singh vs. Smt.Kanak Prabha Dutta & Ors.** that so long as there was no publication of the fact that the Respondent has already retired or steps taken to record change in the register of the Registrar of Firms, in law, it will have to be assumed that the Respondent continued to remain partner in the firm till December 2004, as recorded in the official record pursuant to the notice given in January 2005. Accordingly, the argument canvassed on behalf of the Respondent that, as he had already retired from the partnership firm in November 2003, it was not necessary to disclose his interest in the partnership firm in the nomination form and the affidavits filed along with the nomination form, will have to be rejected.

126. The question is: whether non-disclosure by the Respondent about his interest in the two properties originally agreed to be sold in the name of the partnership firm and which Agreement subsisted till 20th September 2004, on which date, the Respondent filed his nomination form, is a substantive defect? Even this issue will have to be straightaway answered against the Respondent. This is so because the non-disclosure is not of any insignificant matter but having interest in the affairs of the partnership firm, which in turn, had agreed to purchase two plots referred to in Para 14 of the Petition, the market value whereof was quite substantial. Non-disclosure of such item is indeed a substantive defect in the affidavits filed by the Respondent along with the nomination form. The Respondent in the written statement has not specifically denied the assertion made in the Petition that he intentionally did not disclose the said interest in the immovable properties as the value of the undisclosed properties, if reckoned, would run into crores of rupees and he would be unable to explain the source of his income at the time of purchase of the properties. The Respondent

has, however, generally denied the allegations in Para 14 of the Petition in toto, which denial was not sufficient and of no avail.

127. As it is a case of substantive defect in the affidavits in relation to these aspects, it necessarily follows that it is a case of improper acceptance of the nomination form of the Respondent as the same was deficient in respect of substantive matters in the affidavits which formed integral part of the nomination form. Moreover, it is a case covered by sub-clause (iv) of Clause (d) of Section 100(1) of the Act. Inasmuch as, the affidavit is not a truthful affidavit and in conformity with the mandate of the order issued by the Election Commission, which order is founded on the law declared by the Apex Court. In other words, it is a case of non-compliance of the order of the Election Commission issued under Article 324 of the Constitution and resultantly non-compliance of the Constitution.

128. On the above basis, the issues under consideration being Issue Nos.5 and 6 will have to

be answered in favour of the Petitioner and against the Respondent. In that, although the Respondent has filed two affidavits along with the nomination form, but those affidavits are not in conformity and compliance of the order passed by the Election Commission dated 27th March 2007 being wrong, incomplete and/or suppressing material information, on crucial matters as found earlier, which caused misinformation and disinformation to the voters in the Constituency. Such affidavits, though filed, in law, will have to be treated as *non est*. With the result, it would follow that there were no affidavits filed along with the nomination form, resulting in defective nomination form which has been improperly accepted within the meaning of Section 100(1)(d)(i) of the Act. At the same time, the Respondent being the candidate, will be liable for consequences on account of non-compliance of the order issued by the Election Commission in exercise of powers under Article 324(1) of the Constitution of India, which was founded on the Law declared by the Apex Court under Article 141 of the Constitution, thereby, the election of the Respondent will have to be declared as void in

terms of Section 100(1)(d)(iv) of the Act.

129. In the written statement as well as during the cross-examination of the Petitioner's witnesses including in the evidence of the Respondent, much was said about the credentials of the Petitioner and that the Petitioner had filed the present Petition out of vengeance. However, in my opinion, those matters can be relevant only for the limited purpose of weighing the evidence of the Petitioner with circumspection. However, in the present case, as is seen earlier, the allegations made by the Petitioner, in fact, have been proved by the Petitioner by examining the witnesses who were natural witnesses for the Respondent. Besides, the case made out by the Petitioner is substantiated by documentary evidence and not required to be decided on the basis of his oral version. For that reason, those aspects have not been highlighted in the present Judgment.

ISSUE NO.7 :

130. That takes me to the next issue as to

whether Petitioner proves that the Respondent's nomination form is improperly accepted by the Returning Officer? Insofar as this issue is concerned, the Respondent may be right to the extent that the Returning Officer cannot be faulted for having accepted the nomination form of the Respondent. That was required to be accepted inspite of the objection, in view of the decision of the Apex Court in the case of **PUCL (supra)** and the order issued by the Election Commission on the basis of the Law declared in the said Judgment. Inasmuch as, it was not open to the Returning Officer to enquire into contentious issues raised in this Petition in the summary enquiry at the stage of scrutiny of nomination forms. Those matters necessarily have to be addressed only after it is disclosed in an enquiry upon taking evidence on the relevant facts at the trial of the Election Petition. That does not mean that the nomination of Respondent was proper and lawful. As the Respondent's nomination paper suffered from the defects already referred to in the earlier part of this decision, it is plainly a case of improper acceptance of his nomination paper by the Returning

Officer, covered by the rigours of Section 100(1)(d)(i) of the Act. The issue No.7 will have to be answered accordingly.

ISSUE NO.8 :

131. That takes me to the Issue No.8 as to whether on account of improper acceptance of the nomination form, the election result of the Respondent is materially affected? This issue arises in the setting in which Section 100 of the Act is prevalent. Section 100(1)(d) provides for four situations, which would be the grounds for declaring election to be void. Clause (d) provides that the result of the election, insofar as it concerns a return candidate, has been materially affected on account of any one or more of the four circumstances specified therein. It will be useful to reproduce Section 100(1) at this stage, which reads thus :

> "**100.Grounds for declaring election to be void.**-(1) Subject to the provisions of sub-section (2) if the High Court is of opinion-

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963); or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c) that any nomination has been improperly rejected; or

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected-

(i) by the improper acceptance of any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,

the High Court shall declare the election of the returned candidate to be void."

132. Relying on the setting in which clause (d) appears, it was argued on behalf of the Respondent that it is not enough for the Petitioner to

establish that it is a case of improper acceptance of nomination of the Respondent but to further establish that the election of the Respondent has been materially affected on account of such improper acceptance. It was argued on behalf of the Respondent that, that is the requirement of the provision and for which reason, it was not only necessary for the Petitioner to plead, but also prove the fact that the result of the election have been materially affected on account of either improper acceptance of the nomination or due to non-compliance of the provisions of the Constitution or the Act or the Rules or Orders made under the Act.

133. Before I proceed to analyse the argument further, it is necessary to keep in mind that Section 100 as was originally framed in the Act of 1951, came to be amended by Act 27 of 1956. Section 100(1) as it originally stood read thus:

> **"100.Grounds for declaring election to be void.-** (1) If the Tribunal is of opinion-
>
> (a) that the election has not been a free

> election by reason that the corrupt practice of bribery or of undue influence has extensively prevailed at the election; or
>
> (b) that the election has not been a free election by reason that coercion or intimidation has been exercised or resorted to by any particular community, group or section on another community, group or section, to vote or not to vote in any particular way at the election; or
>
> (c) that the result of the election has been materially affected by the improper acceptance or rejection of any nomination,
>
> the Tribunal shall declare the election to be wholly void.
>
> *Explanation.-* In clause (b) of this sub-section, the expression "coercion or intimidation" means any interference or attempt to interfere by whatever means with the free exercise of the right to vote or refrain from voting at an election, and includes a social or economic boycott of members of a community, group or section, or threat of such boycott, with intent to interfere with the free exercise of such right by those members."

. On plain language of the old Section 100(1), it is noticed that the ground for declaring the election to be void as specified in Clause (c) of sub-section (1) was that the result of the election has been materially affected by the improper acceptance or rejection of any nomination. In other words, it covered both the situations,

namely, acceptance or rejection of nomination. In either case, the election was materially affected was required to be pleaded and proved. The anomaly was noticed by the Legislature and Section 100(1) was suitably amended. The ground of nomination has been improperly rejected is now segregated and separately provided in Clause (c) of Section (1) of Section 100. That ground is not hedged with the requirement of pleading and proving that the result of the election has been materially affected because of the improper rejection of the nomination form of any candidate. In other words, the said ground now requires only to establish that it was a case of improper rejection of nomination and nothing more. The Legislature advisedly segregated the ground of improper acceptance and clubbed it under Clause (d) of sub-section (1) of Section 100, which provides four different circumstances in which the election of the returned candidate can be declared void. In view of the amended provision, besides establishing that one of the circumstance existed, the Petitioner is required to plead and prove that the result of the election insofar as it concerns the returned candidate, has been

materially affected. This provision is not only limited to challenge the election of the returned candidate but also of any other candidate who was in the fray. To cover both these situations of challenge on the ground of improper acceptance of nomination of the returned candidate as well as that of any other candidate, the ground of improper acceptance of nomination in clause (d) of Section 100(1) of the Act is made applicable.

134. Insofar as the challenge of improper acceptance of nomination of any other candidate other than the returned candidate, naturally, the Petitioner, who may be one of the candidate next in order of highest votes, not only has to establish the fact that it was a case of improper acceptance of nomination of such candidate, but also the fact that the wasted votes gone to such candidate would have added to his votes or to the votes of some other candidate, who in turn, would have got elected instead of the returned candidate. On the other hand, if the challenge of improper acceptance of the nomination is in relation to the returned candidate, there would be no requirement of either

pleading or proving the fact that his election result has been materially affected. That is the corollary on the finding that the nomination of the returned candidate has been improperly accepted. Counsel for the Petitioner had rightly drawn analogy that in a situation where the election of the returned candidate is challenged on the ground of improper acceptance of the nomination due to reliance on invalid Caste Certificate. In that case, it would be preposterous to require the Petitioner to further plead and prove that the election of the returned candidate was materially affected.

135. Counsel for the Respondent relied on two authorities of the Apex Court. The first is the case of **Vashist Narain Sharma vs. Dev Chandra & Ors. reported in AIR 1954 SC 513** and another is the case of **Tek Chand vs. Dile Ram reported in AIR 2001 SC 905.** In both these cases, the challenge on the ground of improper acceptance of nomination by the Returning Officer was not in relation to the returned candidate, but one of the other candidate in the fray of election. Besides the plea of

improper acceptance of nomination of such candidate, it was further asserted that the votes secured by such candidate being wasted votes would in fact, have added to the tally of another candidate and if so added, would result in the later having secured highest number of votes than the duly returned candidate. In other words, none of these decisions are on the point that even in the case of challenge on the ground of improper acceptance of nomination of the returned candidate, the Petitioner ought to plead and prove that the election of the returned candidate is materially affected. In fact, the decision of the Apex Court in the case of **Vashist Narain Sharma (supra)** answers the controversy in issue. In Para 9 of the said decision, the Court considered three different situations in relation to which the burden of proving the requirement of improper acceptance of nomination resulting in materially affecting the election, would lie on the Petitioner. One of the scenario, as referred to in the said paragraph, in Clause (3), is, where the person whose nomination is improperly accepted, is the returned candidate himself. Insofar as this category is concerned,

the Court unreservedly opined that, that would be the inevitable conclusion. In other words, in the case of challenge founded on the ground of improper acceptance of the nomination of the returned candidate, nothing more is required to be established. Relevant portion of the exposition in Paragraph 9 of the said decision reads thus:

> "9. The learned counsel for the respondents concedes that the burden of proving that the improper acceptance of a nomination has materially affected the result of the election lies upon the petitioner but he argues that the question can arise in one of three ways;
>
> (1) where the candidate whose nomination was improperly accepted had secured less votes than the difference between the returned candidate and the candidate securing the next highest number of votes.
>
> (2) where the person referred to above secured more votes, and
>
> (3) <u>where the person whose nomination has been improperly accepted is the returned candidate himself</u>.
>
> It is agreed that in the first case the result of the election is not materially affected because if all the wasted votes are added to the votes of the candidate securing the (next?) highest votes, it will make no difference to the result and the returned candidate will retain the seat. In the other two cases, it is contended that the result is materially

> affected. So far as the third case is concerned it may be readily conceded that such would be the conclusion. But we are not prepared to hold that the mere fact that the wasted votes are greater than the margin of votes between the returned candidate and the candidate securing the next highest number of votes must lead to the necessary inference that the result of the election has been materially affected. That is a matter which has to be proved and the onus of proving it lies upon the petitioner. it will not do merely to say that all or a majority of the wasted votes might have gone to the next highest candidate. ....."
>
> (emphasis supplied)

136. Thus understood, it is not necessary for the Petitioner either to plead or prove that the election has been materially affected on account of improper acceptance of nomination insofar as the Respondent - returned candidate is concerned. Even assuming that it was so required, if the Petition is read as a whole, there is definite pleading with regard to result of the Respondent having been materially affected by non-disclosure or suppression of material information, amounting to causing misinformation and disinformation to the voters. Even during the evidence, the Petitioner has asserted that position.

137. In my opinion, it is not necessary to elaborate on this matter beyond a point, except to observe that when it is a case of improper acceptance of nomination on account of invalid affidavit or no affidavit filed therewith, which affidavit is necessarily an integral part of the nomination form; and when that challenge concerns the returned candidate and if upheld, it is not necessary for the Petitioner to further plead or prove that the result of the returned candidate has been materially affected by such improper acceptance.

138. The avowed purpose of filing the affidavit is to make truthful disclosure of all the relevant matters regarding assets (movable and immovable) and liabilities as well as criminal actions (registered, pending or in respect of which cognizance has been taken by the Court of competent jurisdiction or in relation to conviction in respect of specified offences). Those are matters which are fundamental to the accomplishment of free and fair election. It is the fundamental right of the voters to be informed about all matters in

relation to such details for electing candidate of their choice. Filing of complete information and to make truthful disclosure in respect of such matters is the duty of the candidate who offers himself or who is nominated for election to represent the voters from that Constituency. As the candidate has to disclose this information on affidavit, the solemnity of affidavit cannot be allowed to be ridiculed by the candidates by offering incomplete information or suppressing material information, resulting in disinformation and misinformation to the voters. The sanctity of disclosure to be made by the candidate flows from the constitutional obligation.

139. While parting, therefore, I cannot resist myself from placing on record that the Parliament to effectuate the letter and spirit of the decision of the Apex Court in **PUCL's case (supra)** may consider of enacting a provision stipulating disqualification of a candidate whose election is invalidated by the Court on the finding that he had filed false and incomplete affidavit, which defect was of substantive character and had resulted in

causing misinformation and disinformation to the voters in the Constituency, so as to disentitle him for a suitable period and atleast in the succeeding election (re-election) immediately after his election has been declared by the Court as void on that count. Such disqualification will be consistent with the scheme of disqualifications provided in Sections 8 to 10A of the Act of 1951.

140. As I have already found that the Respondent was responsible for filing false, misleading and incomplete affidavit accompanying the nomination form, it is a matter for proceeding against the Respondent for offence punishable under the Indian Penal Code. It will be open to the Election Commission to initiate such action and take the same to its logical end.

141. Copy of this Judgment be forwarded to the Election Commission of India, for necessary action.

142. Accordingly, with the above observations, the Petition is made absolute in terms of prayer clauses (a) and (b) with costs. Respondent to pay

cost.

143. At this stage, Counsel for the Respondent prays that the operation of this order be stayed for some time to enable the Respondent to take up the matter in appeal. As the transcription of the Judgment will take some time and the Respondent has statutory remedy of appeal, in the interest of justice, I am inclined to accept this prayer. It is ordered that operation of the operative order shall be kept in abeyance for a period of four weeks from today.

A.M.KHANWILKAR, J.